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The Mediterranean in the English Empire of Trade, 1660-1748

Abstract

This dissertation reintegrates the Mediterranean into the history of the development of the early modern British Empire. During the seventeenth century, the Mediterranean emerged as a distinct political, legal and commercial space within the wider currents of English expansion. The political and legal regimes of the sea shaped the evolution of the English presence there and the rulers of the Ottoman Empire, the North African regencies, and Italian states such as Tuscany and Genoa limited the expansion of English sovereignty. As a result, the sea offers a different perspective on the history of English expansion than that found in imperial histories set in the Atlantic and Indian Oceans. The development of the English presence in the Mediterranean highlights the relative weakness of the early modern English state and the extent to which other polities limited the expansion of its sovereign authority.

However, this dissertation also aims to move beyond an imperial historiography that distinguishes the wider development of English trade and navigation from the growth of English empire. Through the latter half of the seventeenth century and first half of the eighteenth, the Crown's claims to jurisdiction over its subjects and their ships projected English authority into the Mediterranean. This dissertation examines how the English state extended its authority within a pluralistic maritime environment that lay largely beyond the reach of its claims to empire. By studying the jurisdictional contests that arose

when the Crown's claims to authority over its subjects and their ships collided with the sovereignty of Mediterranean polities, it shows how the intersection of diverse sovereign and legal authorities defined the organization of English trade and navigation. Moreover, as the English state extended its authority overseas during the early modern period, it called into question the location of sovereignty and jurisdictional authority in Mediterranean waters as well as in the Atlantic and Indian Oceans. English expansion in the Mediterranean and the political evolution of the sea were part of a global process whereby states and empires sought to establish their authority over oceanic space and networks of trade.

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Notes on Style

In the early modern Mediterranean, English merchants and officials used both “old style” and “new style” forms of dating. Although English correspondents regularly listed both dates on their letters or otherwise specified which form they were using, it is not always possible to confirm whether a particular document is dated new style or old style. For the sake of consistency, I give all dates as they appear in sources, but the year is considered to begin on 1 January. I specify whether particular documents are dated old or new style when chronology would otherwise become confused.

Also for the sake of consistency, I switch from using the terms “England” and “English” to “Britain” and “British” when referring to events that took place after the Act of Union of 1707. When referring to events and processes that spanned the seventeenth and eighteenth centuries, I use the term “English” to reflect the fact that English merchants and officials far outnumbered their Scottish counterparts in the Mediterranean.

I have followed the original spelling and capitalization in quotations from English-language sources, but I have silently expanded all abbreviations. The original spelling and capitalization of French, Italian and other foreign language quotations translated in the text are given in the footnotes. Translations are my own, unless otherwise noted.

Acknowledgements

The completion of this dissertation was made possible through the generous support of numerous institutions. The research and writing of it were supported by financial support from the Harvard University Graduate School of Arts and Sciences, the Harvard University Graduate Society, the Harvard University Center for European Studies, the Harvard University Frank Knox Traveling Fellowship, the Harvard University Department of History's Clive Fellowship, the Institute of Historical Research in London, the Andrew W. Mellon Foundation, the Krupp Foundation, and the US Department of Education. For their assistance and patience, I would like to thank the staffs of the National Archives in Kew, the British Library, the Bodleian Library, the National Maritime Museum, the North Yorkshire Record Office, the Record Office for Leicestershire, Leicester and Rutland, the Special Collections department for the School of Oriental and Asian Studies Library, the National Library of Malta, the Archives Nationales in Paris, and the Archivi di Stato of Florence, Genoa, Turin and Venice. I am particularly grateful to the present Earl of Sandwich for allowing me to carry out research in the journal of Edward Montagu, the first Earl of Sandwich. I am further grateful to Cambridge University's Trinity Hall and to the Institute of Historical Research for providing institutional support during my time in the United Kingdom.

Many people contributed to this dissertation in a variety of ways. Whatever small knowledge of Ottoman Turkish I was able to bring to bear on the sources that feature in this dissertation is entirely thanks to the instruction, assistance and patience of Hakan Karateke and Helga Anetshofer. Philip Stern and Miles Ogborn read through portions of

this dissertation and I benefited greatly from their suggestions, advice and general encouragement. Earlier versions of portions of this dissertation were presented at the Harvard Graduate Student Conference on International History, the London Group of Historical Geographers Seminar at the Institute of Historical Research, the University of Maine/University of New Brunswick Graduate Student Conference, the Princeton-Harvard Graduate Student Conference on Early Modern Europe and the Harvard Early Modern History Workshop. My thanks to the audiences at these talks for their questions, suggestions and comments.

I owe a deep debt of thanks to the members of the committee that examined this dissertation. Cemal Kafadar guided me through my introduction to Ottoman history and this project would not have been possible without his support and encouragement. Maya Jasanoff and Lauren Benton have offered questions and suggestions that I will be thinking over and benefiting from for a long time to come. My greatest thanks go to my advisor, David Armitage. He shepherded this dissertation through numerous drafts and iterations from its first formulation to its final form. I am deeply grateful for his guidance, inspiration and patience.

There are others without whose support this dissertation would not have been possible. Bradford, Holly and Toby saw the beginning of this work; Chip has seen its completion. For them, early modern history was doubtless a poor excuse for delayed walks, but I think they knew better than I how badly I sometimes needed the distraction. Anka Lee has been with this project from start to finish and his support has been exceeded only by his patience. I cannot adequately express my gratitude. My deepest gratitude goes to my parents. Their encouragement enabled me to keep at this dissertation

even during those times when I thought myself flailing blindly through libraries and archives. They have lived with this dissertation through countless conversations and they know it as well as I. They will be even happier than I that it is finally finished. It is dedicated to them.

Introduction

England in the Mediterranean, 1660-1748

The Mediterranean Sea and the world that centered upon it are conspicuously absent from histories that recount the global expansion of English trade and empire during the early modern period.¹ Yet, during these years, the Mediterranean was a center of English commercial and naval activity. Mediterranean ports were the destination of many of the first tentative voyages that expanded England's economic and maritime horizons in the sixteenth century and English merchants established a formidable presence there over the course of the following century. By the 1660's, the value of English commerce to the Mediterranean and southern Europe accounted for nearly half of England's overseas trade.² The sea was also strategically vital to England's development as a European power and the occupation first of Tangier and then of Gibraltar and Minorca testified to the contemporary belief that England required a permanent naval and military presence in the Mediterranean to support its military and naval campaigns. Yet neither the Mediterranean nor the English presence there fit a narrative of English imperial expansion oriented around the Atlantic and Indian Oceans. Instead, the inability

¹ This dissertation uses the terms "English expansion" and "English Empire" to reflect the particular national character of trade and navigation from the British Isles to the early modern Mediterranean. Scottish participation helped to create a notably British empire in the Atlantic and Indian Oceans following the Act of Union of 1707; however, Scottish trade and Scottish merchants and administrators remained largely absent from the Mediterranean through much of the eighteenth century. For the sake of consistency, the dissertation switches to the adjective "British" when referring to events that followed the Act of Union in order to best reflect the composite nature of the polity and state after that date. On the particularly English character of Mediterranean trade, see below, chap. 5.

² See the tables on mid-seventeenth-century English overseas trade in Gigliola Pagano de Divitiis, *English Merchants in Seventeenth-Century Italy*, trans. Stephen Parkin (Cambridge: Cambridge University Press, 1990), 128 and Sari Hornstein, *The Restoration Navy and English Foreign Trade, 1674-1688* (Aldershot: Scolar Press, 1991), 37-49.

of the Crown to develop or sustain a significant colonial empire in the Mediterranean helps to explain its absence from traditional accounts of English imperial expansion.

The Mediterranean emerged over the course of the seventeenth century as a distinct political, commercial and legal space within the global currents of English trade and navigation. While the English Crown and its corporate surrogates elsewhere established their sovereign and jurisdictional authority over colonial settlements and fortified trading posts, the rulers of the Ottoman Empire, the North African regencies and Italian states such as Florence and Genoa limited the expansion of English sovereignty. As a result, the evolution of the English presence in the Mediterranean diverged from that of England's wider imperial expansion. During the early modern period, first the Portuguese and then the Dutch and English created maritime empires in the Atlantic and Indian Oceans that centered on territorial enclaves and the control of sea routes and corridors of trade.³ Forts secured the European presence along American, African and Asian coastlines and served as nodes in growing networks of oceanic trade.⁴ In Africa and Asia, indigenous polities and sovereigns generally restricted the territorial expansion of these empires and trading companies extended their authority over trade while

³ Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400-1900* (Cambridge: Cambridge University Press, 2010). Jane Burbank and Frederick Cooper offer an excellent overview of the structure and history of Europe's maritime empires in Burbank and Cooper, *Empires in World History: Power and the Politics of Difference* (Princeton, NJ: Princeton University Press, 2010), chap. 6, "Oceanic Economies and Colonial Societies: Europe, Asia, and the Americas." On the development of the Portuguese and Dutch Empires in the Indian Ocean, see also Sanjay Subrahmanyam, *The Political Economy of Commerce: Southern India, 1500-1650* (Cambridge: Cambridge University Press, 1990); idem, *The Portuguese Empire in Asia, 1500-1700: A Political and Economic History* (London: Longman, 1990); Om Prakash, *European Commercial Enterprise in Pre-Colonial India* (Cambridge: Cambridge University Press, 1998).

⁴ Geoffrey Parker emphasizes the importance of fortified ports and strongholds for Europe's maritime empires in Parker, *The Military Revolution: Military Innovation and the Rise of the West, 1500-1800*, 2nd ed. (Cambridge: Cambridge University Press, 1996), chap. 4, "The 'Military Revolution' Abroad."

acknowledging and depending upon the sovereignty of local rulers. Nevertheless, European states and companies gradually extended their authority throughout the Atlantic and Indian Ocean worlds and forged powerful empires that would increasingly dominate growing portions of these regions.

The Mediterranean falls largely outside histories centered on the expansion of English empire. Through the first part of the seventeenth century, the character of the trade of the English East India Company largely resembled that of English trade in the Mediterranean. Around both the Mediterranean and Indian Ocean, English merchants lived and worked in foreign ports where they had to adapt to local customs and accept indigenous authority.⁵ By the latter half of the seventeenth century, however, the East India Company's trade increasingly centered on a network of forts and ports that lay under its authority.⁶ In contrast, England failed to establish a comparable imperial or sovereign presence in the Mediterranean. During this same period, the English abandoned Tangier in the face of Moroccan opposition. Expectations that Tangier or, subsequently, Gibraltar and Minorca would become centers of trade under English control proved illusory as trade continued to center on foreign ports where English merchant communities fell under the legal authority of foreign sovereigns. Moreover, even the growing power of the English navy proved to be only partially effective in safeguarding navigation from attack by the Muslim and Christian corsairs who infested the

⁵ Alison Games, *The Web of Empire: English Cosmopolitans in an Age of Expansion, 1560-1660* (Oxford: Oxford University Press, 2008).

⁶ Philip J. Stern, *The Company-State: Corporate Sovereignty and the Early Modern Foundations of the British Empire in India* (Oxford: Oxford University Press, 2011). The Company transferred its western presidency, the headquarters for the Company's operations in western Asia, from the Mughal port of Surat to its own growing city of Bombay in 1687, *ibid*, 73.

Mediterranean. Nowhere was English weakness as evident as it was in the Mediterranean, where the English state struggled to establish a territorial footprint and thousands of English sailors wound up as slaves and captives in the North African regencies and Morocco.⁷

The Mediterranean offers a different perspective on the form and geography of English expansion than that found in imperial histories set in the Atlantic and Indian Oceans. While England's commercial and political expansion reshaped the Atlantic and Indian Ocean worlds, its impact in the Mediterranean was more limited. For this very reason, though, the Mediterranean serves as a model for understanding English expansion within the context of oceanic regions where diverse polities exercised legal and sovereign power. The history of the English presence in the Mediterranean is a history of the limits of English power in the early modern world. It is also, however, a history that illustrates how the English state extended its jurisdiction and authority beyond the reach of its claims to sovereignty and empire. English maritime and commercial expansion lay as much in foreign ports and expansive grey areas where different forms of English and indigenous authority overlapped as it did within settlement colonies and fortified trading ports. The history of England's Mediterranean expansion reveals how the English state extended its authority into a region where its sovereign and imperial presence was limited.

From the latter half of the seventeenth century, the English Crown took a growing role in the protection and regulation of Mediterranean trade and, in the process, integrated

⁷ Linda Colley, *Captives: Britain, Empire and the World, 1600-1850* (New York: Anchor Books, 2004), chap. 2, "The Crescent and the Sea."

the sea into the global expansion of English state authority. Over the course of the seventeenth and eighteenth centuries, English sovereignty and jurisdiction increasingly extended beyond the bounds of the British Isles. Within this process, England's settler colonies and plantations marked neither the limits nor the extent of the extraterritorial expansion of English state authority. Indeed, the history of English expansion in the Mediterranean illustrates that the development of the English Empire was only part of a much broader expansion of English authority. As the Crown aimed to secure and protect English trade and navigation it worked to establish its jurisdiction over ships and subjects overseas. It dispatched fleets to combat the North African regencies, negotiated treaties that secured the safety of English vessels and regulated navigation in an effort to ensure that the terms of these treaties were followed. It sought to protect subjects from supposed abuses of foreign justice and to establish the authority of consuls and diplomats over communities of merchants in foreign ports. It also worked to uphold the jurisdiction of the High Court of Admiralty over crimes committed on board English vessels and over prizes taken by English ships. These claims to jurisdiction projected the authority of the English state into the Mediterranean. Yet, as the expanding jurisdictional claims of the English Crown and courts intersected and clashed with those of Mediterranean states, the resulting jurisdictional conflicts defined and limited the growing presence of the English state in the Mediterranean basin.

This study of the impact of English expansion on the political and legal organization of the Mediterranean further promises to help close the historiographical gap between England's European and imperial histories. A focus on imperial history has obscured the relationship between England's growth as a European power and its global

expansion by reaffirming the separation of Europe from the wider world. Such histories traditionally distinguished the rise of a state system in Europe marked by the territorialization of land and oceanic space from the expansion of imperial and colonial regimes that rested upon layered and poorly defined claims of sovereignty.⁸ Meanwhile, the recent ascendancy of empire within British studies has also come at the cost of the European dimension of British history. The “new” British and imperial histories that have emphasized the importance of empire in the political and cultural development of Britain have, ironically, affirmed the insularity of British history: if Britain was a nation defined by empire, then its European context was of little consequence.⁹ As a result, Europe and empire have become rival poles in the historiography of early modern Britain as scholars debate the relative importance of each for shaping British history.¹⁰

⁸ For instance, Edward Keene seeks to show how Grotian ideas about sovereignty operated within both European and global contexts, but reaffirms the division between a Westphalian Europe of sovereign states and an extra-European environment of empires and colonies: Keene, *Beyond the Anarchical Society: Grotius, Colonialism and Order in World Politics* (Cambridge: Cambridge University Press, 2002). This distinction also seems to be implicit in Charles Maier's analysis of different kinds of territorial and imperial frontiers in *Among Empires: American Ascendancy and its Predecessors* (Cambridge, MA: Harvard University Press, 2006).

⁹ J. G. A. Pocock offered his seminal call for a new British history in “British History: A Plea for a New Subject,” *Journal of Modern History*, 47, no. 4 (December 1975): 601-624 and “The Limits and Divisions of British History,” *American Historical Review*, 87, no. 2 (April 1982): 311-336. For an analysis, see David Armitage, “Greater Britain: A Useful Category of Historical Analysis,” *The American Historical Review* 104, no. 2 (April 1999): 427-445. For an overview of the current state of British Atlantic history, see the essays in David Armitage and Michael Braddick's *The British Atlantic World, 1500-1800*, 2nd ed. (New York: Palgrave Macmillan, 2009). For a programmatic statement of the new British imperial history, see Kathleen Wilson, “Introduction: histories, empire, modernities,” in *A New Imperial History*, ed. Kathleen Wilson (Cambridge: Cambridge University Press, 2004), 1-26.

¹⁰ The tension between England's imperial and European contexts is particularly evident in recent works that have explored the European dimension of British history. For examples of these works, see Steven Pincus, *Protestantism and Patriotism: Ideologies and the Making of English Foreign Policy, 1650-1668* (Cambridge: Cambridge University Press, 1996); Jonathan Scott, *England's Troubles: Seventeenth-Century English Political Instability in European Context* (Cambridge: Cambridge University Press, 2000); Tony Claydon, *Europe and the Making of England, 1660-1760* (Cambridge: Cambridge University Press, 2007); Brendan Simms, *Three Victories and a Defeat: The Rise and Fall of the First British Empire, 1714-1783* (London: Allen Lane, 2007); Stephen Conway, *Britain, Ireland, and Continental Europe in the Eighteenth*

The intersection of Britain's European and imperial histories in the Mediterranean challenges this dichotomy. The British Empire and the settlements that constituted it were the most visible products of the global patterns of trade and migration that carried the English, and later the British, around the world. Scholars have accordingly approached the history of English expansion with the aim of explaining the origins and development of England's colonial empire. This conflation of expansion and empire has obscured the institutional diversity that underlay the global extension of English trade and political authority. Empires that historians once demarcated by the extent of colonial settlement and conquest now look increasingly like webs of overlapping commercial networks and imagined communities of diverse corporate bodies.¹¹ Both states and empires were "composite" entities whose constituent kingdoms, colonies and corporate bodies bridged the supposedly Westphalian system of Europe and the looser political structures of the wider world.¹² In similar fashion, the growth of English trade and navigation in the Mediterranean raised jurisdictional and legal questions in near-European waters that paralleled those that arose in the Indian Ocean and around the Atlantic. Did jurisdiction follow the subject and ship or did it arise from the sovereignty that states claimed over territory and seas? The overseas extension of European sovereignty and the evolution of

Century: Similarities, Connections, Identities (Oxford: Oxford University Press, 2011). Jonathan Scott's *When the Waves Ruled Britannia: Geography and Political Identities, 1500-1800* (Cambridge: Cambridge University Press, 2011) examines England's emergence as a maritime power within Europe to reintegrate the European and imperial dimensions of British history.

¹¹ For this perspective on Europe's early modern empires, see Benton, *A Search for Sovereignty* and Stern, *The Company-State*.

¹² On these points see, J. H. Elliott, "A Europe of Composite Monarchies," *Past and Present*, no. 137 (November 1992): 48–71, and John Robertson, *The Case for the Enlightenment: Scotland and Naples, 1680-1760* (Cambridge: Cambridge University Press, 2005), chap. 4, "The Predicament of 'Kingdoms Governed as Provinces.'" See also Philip J. Stern, "'A Politie of Civill & Military Power': Political Thought and the late Seventeenth-Century Foundations of the East India Company-State," *Journal of British Studies* 47, no. 2 (April 2008): 257-261.

the maritime and territorial boundaries of the state were part of a global process whereby early modern polities sought to resolve these questions and to establish their authority over oceanic space and networks of trade.¹³

I. The Mediterranean in an Age of Expansion

“In the great Age of Exploration the Mediterranean is the sea that has been left behind.”¹⁴ A firmly established historical narrative rests upon the assumption that during the seventeenth century the balance of power in Europe shifted decisively to the states of northwestern Europe, thereby reducing southern Europe and the Mediterranean to the status of historical backwaters. However, it is increasingly evident that the Mediterranean remained a vibrant commercial and maritime region through the early modern period. It also remained a center of commercial and political competition. Rather than being left behind by the historical currents of the early modern world, the Mediterranean was integral to the political and economic processes that characterized this period.

The decline of the Mediterranean world in the face of Europe's imperial expansion has long been central to its historiography. From this perspective, Fernand Braudel's vibrant Mediterranean, which dominated sixteenth-century Europe, was a sea

¹³ The most thorough study in English on the evolution of early modern conceptions of maritime territoriality and oceanic sovereignty remains Fulton, *Sovereignty of the Sea*, pt. 2, chap. 1, “The Historical Evolution of the Territorial Sea,” and chap. 2, “General Adoption of the Three-Mile Limit.” David Armitage's analysis of debates on the “British Seas” is one of the few works to link intra-European debates about maritime dominion to the global expansion of global imperial sovereignty, Armitage, *The Ideological Origins of the British Empire* (Cambridge: Cambridge University Press, 2000), chap 4, “The empire of the seas, 1576-1689.”

¹⁴ Molly Greene, *Catholic Pirates, Greek Merchants: A Maritime History of the Mediterranean* (Princeton and Oxford: Princeton University Press, 2010), 231.

on the brink of precipitous decline.¹⁵ Although the Mediterranean economy was resilient in the face of Portuguese attempts to restrict the flow of spices to the Red Sea and of Spanish conquests in the Americas, it was slowly strangled by the continued rise of the Atlantic economies and the triumph of Dutch and English shipping.¹⁶ The Dutch, who succeeded where the Portuguese had failed, finally diverted the trade in spices around the Cape of Good Hope and thereby undermined the commercial centrality and importance of the Ottoman Empire.¹⁷ Meanwhile, English and Dutch ships, carrying the textiles that displaced Italian and Ottoman manufactures, entered the Mediterranean in a “Northern invasion” that destroyed indigenous shipping and turned the region into a periphery of the militarily and economically dominant states of northern Europe.¹⁸ According to this narrative, the rise of English and Dutch empires of trade founded upon the commerce of

¹⁵ Fernand Braudel, *The Mediterranean and the Mediterranean World in the Age of Philip II*, trans. by Sian Reynolds (New York: Harper & Row, 1972). Braudel variously dated the onset of irreversible decline to 1620, 1650, and 1680. However, the body of his work often suggests a different chronology, pointing to the presence of signs of decline from the late sixteenth century.

¹⁶ On the survival of the Venetian spice trade, see Frederic C. Lane, “The Mediterranean Spice Trade: Further Evidence of its Revival in the Sixteenth Century,” *The American Historical Review*, 45, no. 3 (April 1940): 581-590. Meanwhile, Genoese influence in Habsburg finance ensured that Italy continued to play a role in the Atlantic economy through the sixteenth century, see Braudel, *The Mediterranean and the Mediterranean World in the Age of Philip II*, 1:228-229. On effects of the rise of English and Dutch shipping on the Venetian Empire, see Alberto Tenenti, *Piracy and the Decline of Venice, 1580-1615*, trans. Janet and Brian Pullan (Berkeley and Los Angeles: University of California Press, 1967), passim., and Frederick Lane, *Venice: A Maritime Republic* (Baltimore: The Johns Hopkins University Press, 1973), 386-388.

¹⁷ This view found its most influential expression in Niels Steensgaard, *The Asian Trade Revolution of the Seventeenth Century: the East India Companies and the Decline of the Caravan Trade* (Chicago: University of Chicago Press, 1974).

¹⁸ Braudel, *The Mediterranean and the Mediterranean World in the Age of Philip II*, 2:606, 621-642. Immanuel Wallerstein speaks of the transition of northern Italy from the core of the European world-economy to a semiperiphery, being replaced at the center by northwestern Europe, *The Modern World-System*, vol. 1, *Capitalist Agriculture and the Origins of the European World-Economy in the Sixteenth Century*, (New York: Academic Press, 1974), 216-221. See also idem., “The Ottoman Empire and the Capitalist World-Economy: Some Questions for Research,” in *Review*, 2, no. 3 (Winter 1979): 392-397. For the effects of English piracy on Venetian shipping, see Alberto Tenenti, *Piracy and the Decline of Venice*, trans Janet and Brian Pullan (Berkeley: University of California Press, 1967).

the Atlantic and Indian Oceans reduced the Mediterranean to the historiographical dead end it would supposedly remain until Napoleon's invasion of Egypt.¹⁹

The Mediterranean has not, however, always been absent from analysis of British history. At the start of the twentieth century, the Mediterranean loomed large in the consciousness of Britain's imperial and naval histories. Naval bases at Gibraltar and Malta and primacy in Egypt secured Britain's strategic position within Europe and its lines of communication with its Indian empire.²⁰ In the decade prior to the First World War, great power rivalry further brought the Mediterranean to attention as European empires extended their spheres of influence in Morocco and North Africa. In 1904, the naval historian Sir Julian Corbett projected the strategic situation of his own days onto the seventeenth century to argue that the development of English naval and diplomatic strategy in the Mediterranean was central to Britain's emergence as a European power.²¹ Likewise, E. M. G. Routh presented the history of the English settlement at Tangier as a

¹⁹ On the emergence of the Mediterranean as a zone of imperial competition at the end of the eighteenth century, see C.A. Bayly *The Imperial Meridian: the British Empire and the World, 1780-1830* (London: Longman, 1989); Maya Jasanoff, *The Edge of Empire: Lives, Culture, and Conquest in the East, 1750-1850* (New York: Knopf, 2005); Robert Holland, *Blue-Water Empire: The British in the Mediterranean since 1800* (London: Allen Lane, 2012). A few scholars have demonstrated the importance of the Mediterranean for the development of early modern English shipping and the growth of the Atlantic economy, see Ralph Davis, "England and the Mediterranean, 1570-1670," in *Essays in the Economic and Social History of Tudor and Stuart England*, ed. F.J. Fisher (Cambridge: Cambridge University Press, 1961), 117-137; idem., *The Rise of the English Shipping Industry in the Seventeenth and Eighteenth Centuries*, (London: Macmillan, 1962); Richard T. Rapp, "The Unmaking of the Mediterranean Trade Hegemony: International Trade Rivalry and the Commercial Revolution," *The Journal of Economic History* 35, no. 3 (September 1975): 499-525; Kenneth R. Andrews, *Trade, Plunder and Settlement: Maritime Enterprise and the Genesis of the British Empire, 1480-1630* (Cambridge: Cambridge University Press, 1984).

²⁰ For summaries of the history of the British Empire in the Mediterranean, see David Abulafia, *The Great Sea: A Human History of the Mediterranean* (London: Allen Lane, 2011), Part 4, chaps. 5-9 and Part 5, chaps. 1-7; Holland, *Blue-Water Empire*.

²¹ Julian S. Corbett, *England in the Mediterranean: A Study of the Rise and Influence of British Naval Power within the Straits, 1603-1713* (London: Longmans, Green, and Co., 1904). Conversely, Walter Frewen Lord emphasized the absence of a coherent strategy in England's relationship to the Mediterranean in Lord, *England and France in the Mediterranean, 1660-1830* (London: S. Low, Marston, 1901)

step towards an African empire that the English failed to follow up for another two centuries.²² Despite the anachronistic quality of conclusions that better reflected the conditions of the early twentieth century rather than those of the seventeenth, both Routh and Corbett were more ready to appreciate the Mediterranean's early modern significance than many subsequent historians. The break-up of the British Empire and the subsequent rise of Atlantic history have obscured the Mediterranean dimension of British history that was evident to an earlier generation of historians. It is only in the past decade that historians have begun to expand on early twentieth-century research on the origins and development of England's diplomatic and commercial relationship with the Ottoman Empire.²³

²² E.M.G. Routh, *Tangier: England's Lost Atlantic Outpost* (London: J. Murray, 1912).

²³ Historical scholarship on England's diplomatic and commercial relationship with the Ottoman Empire largely dates from the first half of the twentieth century and has only been supplemented and supplanted by new research in the past decade: J. Theodore Bent, "The English in the Levant," *The English Historical Review* 5, no. 20 (October 1890): 654-664.; Edwin Pears, "The Spanish Armada and the Ottoman Porte," *The English Historical Review* 8, no. 31 (July 1893), 439-466; Mortimer Epstein, *The Early History of the Levant Trade* (London: George Routledge & Sons, 1908); G. F. Abbott, *Under the Turk in Constantinople* (London: Macmillan, 1920); H.G. Rawlinson, "The Embassy of William Harborne to Constantinople, 1583-1588," *Transactions of the Royal Historical Society*, 4th ser., 5 (1922): 1-27; Albert Lindsay Rowland, *England and Turkey: The Rise of Diplomatic and Commercial Relations* (Philadelphia: University of Pennsylvania Press, 1925); Gwilym Ambrose, "English Traders at Aleppo (1658-1756)," *The Economic History Review* 3, no. 2 (October 1931): 246-267; Alfred C. Wood, *A History of the Levant Company* (London, Oxford University Press, 1935); Arthur Leon Horniker, "William Harborne and the Beginning of Anglo-Turkish Diplomatic and Commercial Relations," *The Journal of Modern History* 14, no. 3 (September 1942): 289-316; idem., "Anglo-French Rivalry in the Levant from 1583 to 1612," *The Journal of Modern History* 18, no. 4 (December 1946): 289-305; T. S. Willan, "Some Aspects of English Trade with the Levant in the Sixteenth Century," *The English Historical Review* 70, no. 276 (July 1955): 399-410; Ralph Davis, *Aleppo and Devonshire Square: English Traders in the Levant in the Eighteenth Century* (London: Macmillan, 1967). For more recent studies on Anglo-Ottoman interactions, see Susan Skilliter, *William Harborne and the Trade with Turkey, 1578-1582* (Oxford: Oxford University Press, 1977) and, subsequently, Daniel Goffman, *Britons in the Ottoman Empire, 1642-1660* (Seattle: University of Washington Press, 1998); Alastair Hamilton, Alexander H. De Groot, and Maurits H. van den Boogert, eds., *Friends and Rivals in the East: Studies in Anglo-Dutch Relations in the Levant from the Seventeenth to the Early Nineteenth Century* (Leiden: Brill, 2000); Lisa Jardine, "Gloriana Rules the Waves: or, the Advantage of being Excommunicated (and a Woman)," *Transactions of the Royal Historical Society*, 6th ser., 14 (2004): 209-222; James Mather, *Pashas: Traders and Travellers in the Islamic World* (New Haven and London: Yale University Press, 2009).

Changing perspectives on the origins and development of the British Empire have brought the Mediterranean back into prominence among its historians. The reincorporation of this sea into British history began with literary scholars who expanded upon a long-standing interest in the portrayal of Muslims and North Africans in Elizabethan drama to analyze how these depictions reflected understandings of cultural and racial difference in early modern England.²⁴ Within this post-colonial approach, the cultural construction of extra-European societies is as much a part of empire-building as territorial conquest.²⁵ Since it was in the Mediterranean that the English had their most sustained engagement with the Muslim world until the late eighteenth century, it was there that the English formed conceptions of the “Turk” and of the “Moor” that later helped to legitimize colonial and imperial expansion.²⁶ Yet, this emphasis on the literary depiction of Muslims distorts the nature and scope of seventeenth-century England’s military and commercial success.²⁷ Literary scholars who treat the Mediterranean as an “allegory for empire” both minimize the actual role of the Mediterranean within

²⁴ For an example of early scholarship on cultural depictions of the Islamic world in sixteenth-century England, see Samuel Chew, *The Crescent and the Rose: Islam and England during the Renaissance* (New York: Oxford University Press, 1937).

²⁵ Edward Said, *Orientalism* (New York: Pantheon Books, 1978).

²⁶ Jack D’Amico, *The Moor in English Renaissance Drama* (Tampa: University of South Florida Press, 1991); Ania Loomba, *Shakespeare, Race, and Colonialism* (Oxford: Oxford University Press, 2002); Emily C. Bartels, *Spectacles of Strangeness: Imperialism, Alienation and Marlowe* (Philadelphia: University of Pennsylvania Press, 1993); Nabil Matar, *Turks, Moors, and Englishmen in the Age of Discovery* (New York: Columbia University Press, 1999); Daniel Vitkus, *Turning Turk: English Theater and the Multicultural Mediterranean, 1570-1630* (New York: Palgrave Macmillan, 2003); Jonathan Burton, *Traffic and Turning: Islam and English Drama, 1579-1624* (Newark: University of Delaware Press, 2005); Gerald MacLean, *The Rise of Oriental Travel: English Visitors to the Ottoman Empire, 1580-1720* (New York: Palgrave Macmillan, 2004); idem., *Looking East: English Writings and the Ottoman Empire before 1800* (Houndmills: Palgrave Macmillan, 2007); MacLean and Nabil Matar, eds., *Britain and the Islamic World 1558-1713* (Oxford: Oxford University Press, 2011).

²⁷ For instance, see Nabil Matar, *Britain and Barbary, 1589-1689* (Gainesville: University Press of Florida, 2005), chap. 5, “From Tangier to Algiers.”

England's growing empire of trade and confuse colonial aspirations with the effective expression of imperial dominance.²⁸

The Mediterranean was a vital training-ground for English merchants, travelers, and officials, who learned to interact with foreign and non-European cultures in the ports and waters of the sea.²⁹ Commercial experience acquired in the Mediterranean shaped expectations for American colonization and particularly influenced the settlement of Jamestown.³⁰ The relative weakness of English presence in the Mediterranean was also not exceptional within a narrative of imperial expansion but rather indicative of the tenuousness of that expansion.³¹ Well into the eighteenth century, polities that were far stronger than the early modern English state ringed the Mediterranean. In this respect, the commercial and political conditions of the sea actually mirrored those that prevailed in the South Atlantic and Indian Oceans, where rival empires and indigenous powers posed a real threat to England's fledgling empire.

As a result of the growth of Europe's Atlantic and Indian Ocean trade the relative importance of the Mediterranean declined over the course of the seventeenth and

²⁸ Goran V. Stanivukovic, "Introduction: Beyond the Olive Trees: Remapping the Mediterranean World in Early Modern English Writings," in *Remapping the Mediterranean World in Early Modern English Writings*, ed. Goran V. Stanivukovic (New York: Palgrave Macmillan, 2007), 1-20. For a critique of post-colonial approaches to sixteenth- and seventeenth-century literature, see David Armitage, "Literature and Empire," *The Oxford History of the British Empire*, vol 1, *The Origins of Empire*, ed. Nicholas Canny (Oxford: Oxford University Press, 1998), 99-123.

²⁹ Games, *The Web of Empire*, chap. 2, "The Mediterranean Origins of the British Empire."

³⁰ Pompa Banerjee, "The White Othello: Turkey and Virginia in John Smith's *True Travels*," in *Envisioning an English Empire: Jamestown and the Making of the North Atlantic World*, ed. Robert Appelbaum & John Wood Sweet (Philadelphia: University of Pennsylvania Press, 2005), 150-151; Karen Ordahl Kupperman, *The Jamestown Project* (Cambridge, MA: Belknap Press of the Harvard University Press, 2007), 37-42.

³¹ Colley, *Captives*, passim.

eighteenth centuries. Yet the Mediterranean economy displayed enduring vitality as markets and port cities grew with the changing currents of global trade.³² Old Mediterranean powers like Genoa and Venice fought stubbornly to maintain their commercial and political prominence.³³ But the entry of Northern European merchants and ships into Mediterranean also encouraged the rise of new trading centers. Rulers sought to capitalize on the changing patterns of trade in the Mediterranean; Ottoman officials at Smyrna and the grand dukes of Tuscany at Livorno fostered the creation of port-cities that attracted the newcomers to the Mediterranean and drew together networks of regional and global commerce.³⁴ The networks of global trade continued to pass through the sea's urban centers and integrated it more closely with the Atlantic and Indian Ocean worlds.³⁵

Around the early modern world, the seventeenth century was a period during which the political and legal organization of trade and navigation was extremely uncertain. This was as much the case in the Mediterranean as it was elsewhere. Following the battle of Lepanto in 1571, the Ottomans and Spanish Habsburgs largely ceased their

³² Ottoman historians, in particular, have argued for the resilience of the Ottoman economy and of Levantine trade through the eighteenth century. André Raymond, *Artisans et Commerçants au Caire au XVIII^e Siècle* (Damas: Institut Français de Damas, 1973); Ariel Salzmann, "An Ancien Regime Revisited: Privatization and Political Economy in the 18th century Ottoman Empire," *Politics & Society*, 21, no. 4 (December 1993): 393-423; Jane Hathaway, *The Politics of Households in Ottoman Egypt: the Rise of the Qazdaglis* (Cambridge: Cambridge University Press, 1997); Suraiya Faroqi, "Crisis and Change, 1590-1699," in *An Economic and Social History of the Ottoman Empire, 1300-1914*, vol. 2, 1600-1914, ed. Halil Inalcik and Donald Quataert (Cambridge: Cambridge University Press, 2004), passim.

³³ On Genoa's efforts to adapt to the changing political balance of the Mediterranean, see Thomas Allison Kirk, *Genoa and the Sea: Policy and Power in an Early Modern Maritime Republic, 1559-1684* (Baltimore: Johns Hopkins University Press, 2005).

³⁴ For the comparison of the two cities, see Molly Greene, "Resurgent Islam, 1500-1700," in *The Mediterranean in History*, ed. David Abulafia (Los Angeles: J. Paul Getty Museum, 2003), 219-250.

³⁵ Francesca Trivellato, *The Familiarity of Strangers: The Sephardic Diaspora, Livorno, and Cross-Cultural Trade in the Early Modern Period* (New Haven and London: Yale University Press, 2009).

campaigns for control of the Mediterranean to concentrate on their respective Central Asian and American frontiers and on increasingly serious internal challenges.³⁶ The retreat of these imperial hegemonies left the sea open to the English and Dutch vessels that entered it in growing numbers and to North African and Christian corsairs who now sailed freely across it. These corsairs and the maritime insecurity they created helped to define the character of the early modern Mediterranean and brought the Mediterranean squarely into the seventeenth-century “Age of Piracy.” Around the early modern world, the growth of maritime commerce and the limited ability of states to police sea routes or secure navigation led to a surge in maritime violence. In the Atlantic, pirates and privateers arose at the margins of imperial competition as the English, Dutch and French preyed on Spanish trade. In the Mediterranean, it was religious conflict that framed and legitimized the activities of corsairs. Nevertheless, it was the absence of any clearly dominant power and the coexistence of a variety of competing states and polities that underlay the rise of insecurity within both these maritime environments.

II. *The Mediterranean in the English Empire of Trade*

As historians of the Mediterranean have brought that sea back into narratives of global history, historians of Britain and the British Empire have begun to bring the Mediterranean back into imperial history. It is now becoming clear that the Mediterranean world occupied a critical place in the early modern expansion of English commerce and navigation. Although the rise of northern European economies ultimately

³⁶ On Ottoman and Habsburg competition in the sixteenth-century Mediterranean, see Andrew Hess, *The Forgotten Frontier: A History of the Sixteenth Century Ibero-African Frontier* (Chicago: University of Chicago Press, 1978).

contributed to the relative decline of many of the polities surrounding the Mediterranean, the cities and ports surrounding the Mediterranean were among the largest and richest markets for English merchants through the seventeenth century. The Mediterranean still accounted for a quarter of English trade at the end of the century. This proportion declined over the course of the eighteenth century but nevertheless illustrates the importance of the sea within England's development as a commercial power.³⁷ Indeed, for much of the seventeenth century, the scale and value of the trade of the Levant Company, which regulated English trade to the Ottoman Empire, exceeded that of the East India Company. In 1669, for example, the value of English trade to the Levant was £466,703 while the total value of the imports and exports of the East India trade amounted to about £439,869.³⁸ These figures may actually understate the contemporary significance of trade to the Mediterranean and southern Europe. This trade rested largely on the export of manufactures and woolen goods and thus directly supported English workers and the English balance of trade.³⁹ The merchant and commercial thinker, John Cary, expressed common opinions when he wrote that the East India trade was detrimental to England since it brought Indian manufactures into competition with those of England while asserting that "the *Spanish, Turkey, and Portugal* Trades are very advantageous, as they vend great Quantities of our Product and Manufactures, and

³⁷ Sari Hornstein provides an effective summary of the evolution of the structure of English trade during the latter half of the seventeenth century in Hornstein, *The Restoration Navy*, 33-36.

³⁸ These figures are derived from those calculated by Robert Brenner in Brenner, *Merchants and Revolution: Commercial Change, Political Conflict, and London's Overseas Traders, 1550-1653* (London and New York, NY, 2003), 29.

³⁹ On the composition of England's Mediterranean trade, see Pagano de Divitiis, *English Merchants in Seventeenth-Century Italy*, 153-181; Hornstein, *The Restoration Navy*, 36-42.

furnish us with Materials to be wrought up here, and disperse our Commodities to other places where we could not so conveniently send them our selves.”⁴⁰

The value of Mediterranean trade both points to the importance of the sea within England’s commercial expansion and helps to explain English efforts to secure a territorial foothold near or within it. The acquisition of the former Portuguese colony of Tangier on the North African Coast in 1661 and the subsequent conquest of Gibraltar and Minorca fifty years later brought England’s growing overseas empire into the Mediterranean world. These expensively garrisoned colonies and the fleets cruising off them represented a far greater commitment of state resources than were allotted to the American colonies until well into the eighteenth century. Indeed, the Mediterranean was probably the overseas region where the English state was most present through the seventeenth century. English fleets were a near permanent presence around the sea and the growth of consular and ambassadorial networks testified to the Crown's commitment to support England's commercial and diplomatic interests.

Nevertheless, by the early eighteenth century the dramatic growth of England's Atlantic economy and of the East India Company had eclipsed England's Mediterranean trade and French competition had begun to marginalize the English merchant community in the Ottoman Empire. Meanwhile, failure and disappointment marked the history of England's Mediterranean empire. The settlement of Tangier was the most intensive and expensive colonial project of the Restoration state, yet the project ended in total failure when the English destroyed and abandoned the town two decades after taking possession

⁴⁰ John Cary, *An Essay on the State of England in Relation to its Trade, its Poor, and its Taxes, for Carrying on the Present War against France* (Bristol, 1695), 130.

of it. Minorca was lost at the beginning of the Seven Years' War and would be surrendered two more times and finally ceded back to Spain early in the nineteenth century.⁴¹ Gibraltar's symbolic and sentimental significance as the "rock of empire" has also obscured its initially marginal utility as either a naval base or trading center. Even in the eighteenth century Gibraltar attracted vocal patriotic pride. Nevertheless, its value as a diplomatic bargaining chip far outstripped either its strategic or commercial importance.⁴² England's early modern Mediterranean empire was thus a tenuous entity that testified to the importance of the sea for English trade and strategy but contributed relatively little to either.

As a result of the limits of English territorial sovereignty around the Mediterranean, English merchants overwhelmingly resided in ports and cities that fell under the authority of foreign sovereigns. In this respect, the histories of the English Levant Company and of its corporate offshoot, the East India Company, further testify to the different trajectories that marked the evolution of English trade in the Mediterranean and the Indian Ocean. In the latter half of the seventeenth century, the East India Company emerged as an imperial power in its own right as its trade increasingly centered on a network of plantations and colonies that stretched from the south Atlantic to the Indonesian archipelago.⁴³ The Levant Company, on the other hand, was a more purely

⁴¹ On the history of the British occupation of Minorca, see Desmond Gregory, *Minorca, the Illusory Prize: A History of the British Occupations of Minorca between 1708 and 1802* (Rutherford, NJ: Fairleigh Dickinson University Press, 1990).

⁴² On the variety of eighteenth-century views of Gibraltar, see Stetson Conn, *Gibraltar in British Diplomacy in the Eighteenth Century* (New Haven: Yale University Press, 1942), chap. 11, "The Value of Gibraltar;" Holland, *Blue-Water Empire*, 9.

⁴³ Stern, *The Company-State*, passim.

commercial body; although it paid the salary of England's ambassador to the Ottoman Empire its political role deteriorated over the course of the seventeenth century. Unlike the East India Company it possessed neither colonies nor forts and it did not wage wars or negotiate treaties on its own authority. Instead, its members enjoyed a monopoly on English trade to the Ottoman Empire but they fell largely under Ottoman legal authority while in the Levant and were in no position to dictate either the terms of trade or the conditions of their residency in the eastern Mediterranean. The position of the Levant Company in the Ottoman Empire was indicative of the general character of English trade to the Mediterranean. Neither the English state nor English merchants were able to dictate the terms of trade in the Mediterranean or impose their will consistently on their Mediterranean counterparts. In contrast to the expansion of English empire in the Atlantic and Indian Oceans, accommodation largely defined England's presence in the early modern Mediterranean.⁴⁴

The limits to the expansion of English sovereignty into the early Mediterranean are, however, only part of the story of England's place in the trading world of that sea. Through the seventeenth century and into the eighteenth, the form of what became the British Empire remained highly uncertain. Colonies failed almost as regularly and no more predictably than they succeeded.⁴⁵ As a result, the shape of empire was quite literally in constant flux. Conceptions of the empire as a trans-Atlantic political community grew up alongside different visions of the relationship between England and

⁴⁴ Games, *Web of Empire*, esp. chap. 2, "The Mediterranean Origins of the British Empire;" Mather, *Pashas*, passim.

⁴⁵ Games, *Web of Empire*, esp. chap. 6, "Madagascar, 1635-1650."

its overseas expansion. Some commentators saw the Mediterranean and England's possessions within that sea as integral to a wider maritime and commercial empire. The pamphleteer Thomas Gordon thus asserted the "Importance of Gibraltar to the British Empire" in a work describing the benefits of the site and the politician Henry Maxwell later offered recommendations to improve Gibraltar and Minorca so as "to build a much greater *British* Empire in the Islands of the *Mediterranean*." For Maxwell, Gibraltar and Minorca were part of a wider British Empire built upon "Large and Fruitful Islands" and the "Command of the Seas."⁴⁶ For others, though, territorial empire, even of such an insular variety, was subordinate to wider questions of commercial competition.⁴⁷ In the words of Joseph Addison, "Trade, without enlarging the *British* Territories, has given us a kind additional Empire."⁴⁸ This empire of trade contained Britain's plantations but extended well beyond them. Only in the second quarter of the eighteenth century would ideas of colonial and commercial empire fully come together within a conception of the British Empire as a trans-Atlantic political community that was "Protestant, commercial, maritime and free."⁴⁹

⁴⁶ [Thomas Gordon], *Considerations Offered upon the Approaching Peace and upon the Importance of Gibraltar to the British Empire, being the Second Part of the Independent Whig* (London, 1720); Henry Maxwell, *Proposals to Render the Possession of Minorca, and Gibraltar, More useful to the Commerce of Britain, as well as to her Power by Sea, and Land, and to take away the Expence of their Maintainence* (n.p., 1723), 13, 17.

⁴⁷ For an analysis of the political dimension of early-modern commercial competition, see Istvan Hont, *Jealousy of Trade: International Competition and the Nation-State in Historical Perspective* (Cambridge, MA: Belknap Press of Harvard University Press, 2005), chap. 2, "Free Trade and the Economic Limits to National Politics: Neo-Machiavellian Political Economy Reconsidered."

⁴⁸ [Joseph Addison], *The Spectator*, no. 69 (May 19, 1711).

⁴⁹ Armitage, *The Ideological Origins of the British Empire*, chap. 7, "Empire and Ideology in the Walpolean Era."

The growth of Britain's colonial empire was thus only part of a much broader expansion of commerce, navigation, and movement. "Britain's global presence was greater and more dispersed than its imperial presences, and one of the reasons for this was that the British maritime world was always larger and more extended than Britain's imperial dominion."⁵⁰ Britain's development as a naval and commercial power was central to but not always coterminous with the evolution of its empire.⁵¹ Navigation laws and corporate governance established an extraterritorial framework of laws and institutions that regulated the activity of English merchants both at sea and in foreign ports.⁵² The study of English expansion thus cannot be limited to the study of colonial possessions and the networks of communication and commerce that linked them. Instead, it must also ask how and how far English state authority extended beyond its imperial dominions to match the reach of its global maritime world. In this vein a century ago, Sir Julian Corbett equated maritime power with imperial dominion when he credited William III with the strategic insight that the Mediterranean was the key to the balance of power in Europe and described him as the one who "saw how by that means the British frontier could be carried unassailably up to the tenderest border of the old Mediterranean States which had been wont to give the law to Europe and to count the nations of the

⁵⁰ David Cannadine, "Introduction," in *Empire, the Sea and Global History: Britain's Maritime World, c. 1760-1840*, ed. Cannadine (Basingstoke: Palgrave Macmillan, 2007), 4.

⁵¹ Patrick K. O'Brien, "Inseparable Connections: Trade, Economy, Fiscal State, and the Expansion of Empire, 1688-1815," *The Oxford History of the British Empire*, vol. 2, *The Eighteenth Century*, ed. P. J. Marshall (Oxford: Oxford University Press, 1998), 53-77. On the relationship between Britain's development as a naval power and its imperial expansion, see N. A. M. Rodger, *The Command of the Ocean: A Naval History of Britain, 1649-1815* (London and New York, 2004), *passim*.

⁵² Thomas Leng, "Commercial Conflict and Regulation in the Discourse of Trade in Seventeenth-Century England," *The Historical Journal* 48, no. 4 (December 2005): 933-954.

North Sea too distant for serious calculation.”⁵³ Corbett provided no critical analysis to explain what constituted the “British frontier” in the Mediterranean; nevertheless, his evocative description of Britain’s naval and military expansion foreshadowed more recent analyses of the political and legal status of ships in the early modern world.

The development of the English presence in the Mediterranean highlights the degree to which the growth of English trade and navigation carried with it the extraterritorial expansion of state authority. Ships functioned as “islands of law” that carried state authority across oceanic bodies. The global expansion of the English state thus rested not only with the establishment of sovereignty over American and subsequently South Asian territory, but also with the extension of the jurisdictional authority of the state over subjects and ships as they traveled across oceans and into foreign harbors. In a sea where England's colonial presence was tenuous and limited, ships became critical sites for defining the extent of English legal authority. In the Mediterranean, as in the Atlantic and Indian Oceans, ships carried the authority of the British state into maritime arenas that were already bounded by law. If ships in the early modern world were “vectors of Crown law thrusting into ocean space,” they were also, and for the same reason, contested spaces.⁵⁴

Both the growth of English jurisdictional authority in the Mediterranean and the limits placed on the expansion of English sovereignty in that sea were typical of parallel processes at work in the Atlantic and Indian Oceans. Around the Indian Ocean, the

⁵³ Corbett, *England in the Mediterranean*, 2: 313.

⁵⁴ Both the classification of ships as “islands of law” and the evocative description of their role in the transmission of state legal authority come in Lauren Benton, “The Legal Spaces of Empire,” 704.

Portuguese and, subsequently, the English and the Dutch, entered an oceanic environment with a developed legal and commercial culture.⁵⁵ European trade dramatically altered both the political economy and legal regimes of that sea, but sovereigns around the Indian Ocean continued to influence the legal and commercial organization of oceanic trade. In both the Indian and Atlantic Oceans, the expansion of British navigation and empire helped to supplant Iberian claims to stewardship over oceanic space with corridors of imperial regulation.⁵⁶ Similar patterns of jurisdictional competition defined the construction of empires and the expansion of state sovereignty in the Mediterranean and other oceans.⁵⁷ The growth of English trade and naval power incorporated the Mediterranean into patterns of jurisdictional competition that defined the extent of English sovereign and legal authority. In this respect, the development of the English presence in the Mediterranean was integral to the greater institutional and legal “polyphony” of English expansion.⁵⁸

⁵⁵ C. H. Alexandrowicz, *An Introduction to the History of the Law of Nations in the East Indies (16th, 17th and 18th Centuries)* (Oxford: Clarendon Press, 1967). For a survey of the political economy of the Indian Ocean at the time of the Portuguese arrival in that sea, see Sanjay Subrahmanyam, *The Career and Legend of Vasco da Gama* (Cambridge: Cambridge University Press, 1997), 94-112.

⁵⁶ Philip Steinberg, *The Social Construction of the Ocean* (Cambridge: Cambridge University Press, 2001) chap. 3, “Ocean Space and Merchant Capitalism;” Benton, *A Search for Sovereignty*, chap. 3, “Sovereignty at Sea: Jurisdiction, Piracy, and the Origins of Ocean Regionalism.”

⁵⁷ Within the historiography of English expansion, research on jurisdictional competition focuses on either intra-imperial disputes or on the rivalry between common law courts and their civil law rivals, as in Elizabeth Mancke, “Chartered Enterprises and the Evolution of the British Atlantic World,” in *The Creation of the British Atlantic World*, ed. Elizabeth Mancke and Carole Shammas (Baltimore and London: The Johns Hopkins University Press, 2005), 237-262 and Kelly de Luca, “Beyond the Sea: Extraterritorial Jurisdiction and English Law, c. 1575- c. 1640” (PhD Diss., Columbia University, 2008).

⁵⁸ Christopher Tomlins, “The Legal Cartography of Colonization, the Legal Polyphony of Settlement: English Intrusions on the American Mainland in the Seventeenth Century,” *Law and Social Inquiry* 26, no. 2 (Spring 2001): 315-72.

III. *The Legal Geography of the Early Modern Mediterranean*

Conceptions of the Mediterranean as a distinct world dominate studies of its geography and of its place within the history of the early modern world. Historians of the Mediterranean have generally followed Braudel in seeking to locate and to demonstrate the sea's "enduring unity and distinctiveness." Climate, ecology, and cultural and commercial connections linked the peoples living around the sea and united them within a shared environment.⁵⁹ As a result, Mediterranean historiography emphasizes environmental and economic histories of the sea as opposed to political and national histories occurring *in* the sea.⁶⁰ It also tends to remain inward looking. Historians of the Mediterranean have focused more on evaluating how Atlantic powers disrupted the sea than with studying how the legal and political organization of the sea developed through the early modern period.⁶¹ An emphasis on the essential unity of the Mediterranean also marginalizes the history of the boundaries that people and polities have attempted to draw across it. The evolution of the conflicting lines of sovereignty and jurisdiction that ran through the Mediterranean incorporated the sea into a wider history whereby states sought to extend their authority over oceans and the trade that flowed across them. Nevertheless, both particular legal traditions and political conditions distinguished the sea from the wider oceanic environments into which English vessels sailed.

⁵⁹ This is the underlying theme of Braudel's *The Mediterranean and the Mediterranean World in the Age of Philip II*.

⁶⁰ Peregrine Horden and Nicholas Purcell, *The Corrupting Sea: A Study of Mediterranean History* (Oxford: Blackwell Publishers, 2000), 1; *Rethinking the Mediterranean*, ed. W. V. Harris (Oxford and New York: Oxford University Press, 2004); Faruk Tabak, *The Waning of the Mediterranean, 1550-1870: A Geohistorical Approach* (Baltimore: The Johns Hopkins University Press, 2008).

⁶¹ For a critique of this historiographical tradition, see Molly Greene, "Beyond the Northern Invasion: The Mediterranean in the Seventeenth Century," *Past & Present* 174 (February 2002): 42-71.

The legal and sovereign organization of the seventeenth-century Mediterranean had its roots in that sea's ancient history. For the Romans, the Mediterranean was both *mare nostrum* and *res nullius*, an inner sea which they dominated but whose waters were not subject to appropriation. It was also a distinct legal space, as when the emperor Antoninus Pius pronounced in the second century, "I am lord of the world, but the law of the sea must be judged by the sea law of the Rhodians when our law does not conflict with it."⁶² Medieval glossators on Roman law later clarified the relationship between imperial authority and oceanic space when they affirmed the impossibility of *dominium* over the sea but asserted that the emperor indeed had jurisdiction over it and further made allowances for exclusive use of portions of the sea.⁶³ In the fourteenth century, jurists who argued that the imperial sovereignty codified by Justinian had devolved to Europe's emerging cities and states extended their arguments into oceanic space.⁶⁴ Bartolus of Sassoferato and his student Baldus of Ubaldis argued that princes held jurisdiction over the seas extending from their coasts to distances of, respectively, one hundred or sixty

⁶² Quoted in Anthony Pagden, *Lords of all the World: Ideologies of Empire in Spain, Britain and France, c. 1550-c. 1800* (New Haven: Yale University Press, 1995), 203, n. 68. Andrea Addobatti, "Acque territoriali: modelli dottrinari e mediazioni diplomatiche tra medioevo ed età moderna," in *Frontiere di terra, frontiere di mare: la Toscana moderna nello spazio mediterraneo*, ed. Elena Fasano Guarini and Paola Volpini (Milan: FrancoAngeli, 2008), 177-178. See also Percy Thomas Fenn, "Justinian and the Freedom of the Sea," *American Journal of International Law* 19, no. 4 (1925): 716-727.

⁶³ Andrea Addobatti, "Acque territoriali," 177.

⁶⁴ On the political and ideological context within which Bartolus and Baldus wrote about maritime sovereignty, see Quentin Skinner, *The Foundations of Modern Political Thought*, vol. 1, *The Renaissance* (Cambridge: Cambridge University Press, 1978), 9-12.

miles. These Italian jurists established a distinct legal tradition regarding state authority over coastal waters in the western Mediterranean.⁶⁵

The extension of state sovereignty over the waters of the medieval and early modern Mediterranean shattered the theoretical legal and political unity of the Roman Mediterranean. In fact, that unity had long before faded away with the dissolution of the western empire and the Islamic conquests in North Africa and the Levant. Consequently, the Mediterranean became a frontier between Christian and Muslim polities for which holy war was a basic ideological tenet. The fracturing of sovereign authority over the waters of the sea among the various polities that surrounded it divided its waters still further. As a result, no single state or empire controlled the patterns or terms of trade in the Mediterranean and different polities and empires exercised varying degrees of control over the sea. The princes of Monaco and dukes of Savoy collected duties from ships passing their shores and Italian princes claimed jurisdiction over prizes brought into their ports and crimes committed on board ships in harbor. In the Levant, the Ottoman Empire remained the dominant power. The legal geography of the Mediterranean was a complicated matrix of overlapping and intersecting sovereign authorities.

Spheres of political influence and jurisdictional authority, as well as cultural and religious differences, divided the Mediterranean into a variety of regional seas. English jurists testified to the political division of Mediterranean waters when they described the sovereign claims that the Venetians, Genoese and Tuscans made, respectively, over the

⁶⁵ Michel Bottin, "Frontières et limites maritimes au xvi^e siècle," in *La Frontière des origines à nos jours*, ed. Maïté Lafourcade (Bordeaux: Presses Universitaires de Bordeaux, 1998), 27-41.

Adriatic, the Ligurian and Tyrrhenian Seas.⁶⁶ Early modern maps of the Mediterranean showed that basin as an accumulation of gulfs, bays and regional seas. For example, a 1685 map by William Berry split the Mediterranean into “West” and “East” Seas and further divided it according to its gulfs and coastal seas.⁶⁷ Suggestively, Berry described the Adriatic as the Gulf of Venice and further labeled stretches of coastal water according to the lands or states which they bordered. Although his references to the Sea of Tuscany and to the Sea of Genoa thus seem to have been primarily geographic, they nevertheless evoke the jurisdictional and sovereign authority that these states had historically claimed over their coastal waters and, to varying degrees, continued to exercise. Ships and merchants thus crossed a variety of often-unclear political, legal and cultural boundaries.⁶⁸ Yet, it is equally significant that Berry and other cartographers saw these gulfs, bays and inland waters as part of a single Mediterranean sea.⁶⁹ In this respect they echoed widespread conceptions of the Mediterranean as a unified sea that encompassed the political and cultural divisions that cut across it.

⁶⁶ John Selden, *Of the Dominion, or, Owernship of the Sea*, trans. Marchamont Nedham (London, 1652), 99-106; Alexander Justice, *A General Treatise of the Dominion and Laws of the Sea* (London, 1705), 90-109.

⁶⁷ William Berry, “Mediterranean Sea divided into its Principall parts or seas” (London, 1685). This map was based on one created by the French cartographer Nicolas Sanson, “Mer Mediterranée divisée en ses Principales Parties, ou Mers.” I have not yet been able to date Sanson’s original map. On early modern French mapping of the Mediterranean, see Christopher Drew Armstrong, “Travel and Experience in the Mediterranean of Louis XV,” in *Rethinking the Mediterranean*, 242-253.

⁶⁸ Molly Greene succinctly describes this situation in “The Ottomans in the Mediterranean,” in *The Early Modern Ottomans: Remapping the Empire*, ed. Virginia Aksan and Daniel Goffman (Cambridge: Cambridge Univesity Press, 2007), 112.

⁶⁹ Armstrong, “Travel and Experience in the Mediterranean,” 242-243, 252.



William Berry, "Mediterranean Sea divided into its Principall parts or seas," 1685.
Geography and Map Division, Library of Congress, g5672m ct000

Commercial connections and the movement of ships and people around the sea linked the Mediterranean as a single maritime region. Merchant networks, particularly those of the Sephardic diaspora but including those formed by other communities, spanned the European, African and Levantine shores of the Mediterranean.⁷⁰ Common maritime traditions also bridged the sea's uncertain cultural frontiers. Christian and Muslim powers observed similar regulations regarding the treatment of neutral vessels at sea and the conduct of ships belonging to belligerents in neutral harbors. Both the religious and the legal frontiers of the Mediterranean were permeable as illustrated by the merchants who crossed political and cultural boundaries in search of legal redress for the actions of corsairs. In the face of the growing naval power of England and France, Mediterranean polities asserted, defended and expanded jurisdictional and sovereign claims over their littoral and coastal waters in similar ways.

The English merchants, sailors, and diplomats who arrived in the sea after the close of the sixteenth century entered a distinct commercial, cultural and maritime world. During the early years of the English entry into the Mediterranean, merchants and mariners integrated themselves fully into the Mediterranean world. Merchants converted to Catholicism, became subjects to Mediterranean princes and took up permanent residence in Mediterranean port-cities. Ships' masters and mariners similarly took service in the navies of Italian princes and of the rulers of the North African regencies, particularly after James I sought to suppress English piracy and privateering early in the

⁷⁰ The networks of Sephardic merchants that crossed the Mediterranean and linked it to the wider world are recovered in Trivellato, *The Familiarity of Strangers*, chap. 2, "Livorno and the Western Sephardic Diaspora."

seventeenth century.⁷¹ Although the initial entry of English ships and merchants into the Mediterranean disrupted the commercial patterns of the sea, it took place largely outside the direction or aegis of the English Crown.

Over the course of the seventeenth century, the English established a notable, if uneven, presence around the Mediterranean as merchants congregated in factory communities in Mediterranean ports. Some of these national communities, especially those at the thriving entrepôts of Livorno and Smyrna, included upwards of thirty merchants; indeed, more than sixty merchants and factors composed the factory at Smyrna at times during its heyday in the third quarter of the seventeenth century.⁷² Conversely, the factories at Genoa and Naples included only a handful of merchants at that time.⁷³ The English merchant communities in North Africa were also generally small. More important than these factories were the consuls responsible for managing diplomatic relations with the North African regencies and negotiating the release of English slaves.⁷⁴ Moreover the character of these communities varied widely. In the eighteenth century, for example, the “British” factories at Cadiz and Genoa were

⁷¹ Barbara Donati, *Tra Inquisizione e Granducato. Storie di inglesi nella Livorno del primo seicento* (Rome: Edizioni di storia e letteratura, 2010).

⁷² Sonia Anderson *An English Consul in Turkey: Paul Rycaut at Smyrna, 1667-1678* (Oxford: Clarendon Press, 1989), 66.

⁷³ Edoardo Grendi, “Gli inglesi a Genova (Secoli XVII-XVIII),” *Quaderni Storici* 39, no. 1 (2004): 248-9.

⁷⁴ For a survey of English relations with the North African regencies, see Godfrey Fisher, *Barbary Legend: War, Trade and Piracy in North Africa, 1415-1830* (Oxford: Clarendon Press, 1957).

composed largely of Irish Catholic and naturalized French and Swiss Protestants, respectively.⁷⁵

The organization of English trade to the Mediterranean also broadly reflected some of the key cultural and political divisions that challenged the unity of the sea. The monopoly of the Levant Company on English trade to the Ottoman Empire essentially bifurcated England's Mediterranean commerce between a zone of regulated commerce in the Levant and open trade in the western Mediterranean. The regulatory authority of the Levant Company stemmed both from the inability and unwillingness of the English state to bear the cost of maintaining diplomatic relations with the Ottoman Empire and the belief that corporate regulation and representation was necessary to secure trade to the supposedly despotic Ottoman Empire. Nevertheless, the conditions and organization of English trade around the Mediterranean were broadly similar. The Levant Company provided a regulatory umbrella under which its members traded to the Ottoman Empire, but those merchants traded privately and largely managed their own affairs.

It was from the latter half of the seventeenth century that the growing power of the English state changed the character of England's Mediterranean presence. During this period the growth of English trade in the Mediterranean encouraged the state to take an increasingly significant role in the protection and regulation of navigation and commerce in that sea. Naval protection for English shipping and the increasingly global reach of English commerce gave that nation's merchants a substantial advantage over their

⁷⁵ Jean O. McLachlan, *Trade and Peace with Old Spain, 1667-1750* (Cambridge: Cambridge University Press, 1940), 140; Grendi, "Gli inglesi a Genova," 248-9.

Mediterranean counterparts.⁷⁶ As the English Crown sought to secure its subjects and their ships from attack, it extended its authority over English navigation. Meanwhile, diplomatic and consular networks grew with the strategic significance of the sea and helped to reshape the political frameworks within which merchants operated. These officials also stood at the center of efforts to impose a greater degree of state control over the loosely defined communities of English merchants in Mediterranean ports and over the English ships that sailed between them. These officers represented communities of merchants and the English Crown in foreign ports and cities, but they were themselves also the overseas embodiments of that state and they extended the authority of the Crown to its overseas subjects.⁷⁷ The legal authority of these representatives over English subjects varied around the Mediterranean; however, their presence in Mediterranean ports testified to the expansion of the English state around the sea.

The expansion of the English state ultimately brought one more source of legal and political authority into an already crowded maritime environment. Contests between the extraterritorial jurisdiction of the Crown over English ships and subjects and the sovereignty that Mediterranean polities claimed over their ports and littoral waters highlighted pervasive ambiguities as to the organization and distribution of political authority both in the Mediterranean and in the wider world.⁷⁸ Even so, the limits of

⁷⁶ Gigliola Pagano de Divitiis, "Il porto di Livorno fra Inghilterra e Oriente," *Nuovi studi livornesi* 1 (1993): 43-87; eadem, *English Merchants in Seventeenth-Century Italy*, passim.

⁷⁷ For this conception of early modern state officials, see Michael J. Braddick, *State Formation in Early Modern England, c. 1550-1700* (Cambridge: Cambridge University Press, 2000), chap. 1, "The Embodiment of the State."

⁷⁸ Few works have explored the political or ideological frameworks within which English merchants operated in Mediterranean ports. The exception is Grendi, "Gli inglesi a Genova," passim.

English sovereignty in the Mediterranean set it apart from both the Atlantic and Indian Oceans. Yet, it is precisely because England's imperial presence in the early modern Mediterranean was minimal that the sea offers a useful perspective on England's overseas expansion during that period. The history of England's early modern Mediterranean presence illustrates how the expansion of English state and legal authority took place within a pluralistic oceanic environment. It equally reveals how far the extraterritorial expansion of English jurisdiction carried the authority of the state beyond the bounds of the growing British Empire.

Chapter 1

“Situating in the Midst of the Trading World”: Tangier, the Mediterranean and the Restoration Empire, 1660-1684

...what a glory it is for the king of Great Britain to have such a fort, & firme footing in the eyes of all the Levantine Southern world, so neer the Pillers of Hercules, & the mouth of the mediterranean, a place fitt for great Designes.¹

The occupation of Tangier was one of the most ambitious and intensive overseas projects of the seventeenth-century English state.² Between 1661 and 1684, Charles II and his ministers invested more in Tangier than in any other English colony and poured some two million pounds into developing a harbor that promised control over the inner sea and the security of an English port linking the burgeoning Atlantic economy to its Iberian and Mediterranean markets.³ The enormous expenditure of money and manpower

¹ James Howell, “A short Discours of the Late Forren Acquests which England holds, Viz of Dunkirk in Flanders; Tangier in Barbary, Boombay in the East Indies, Jamayca in the West Indies, Demonstrating by cleere politicall Reasons, How much they may conduce to the Honor, Security, & Advantage of this Nation. In answer to some pamphletts which have bin obruded to the world both at Home & Abroad, to the contrary,” March 1662, The National Archives (TNA) SP 29/52, f. 263r. I follow Paul Seaward in crediting the “short Discours” to the prolific pamphleteer James Howell, see Seaward’s “A Restoration Publicist: James Howell and the Earl of Clarendon, 1661-6,” *Historical Research* 61, no. 1 (Feb. 1988): 127-128.

² The abandonment of Tangier in 1684 has long caused historians to neglect the colony and its significance for the development of the British Empire. Recent histories of Britain’s seventeenth-century overseas expansion have, however, shown a renewed interest in Tangier and have begun to reintegrate the colony into the wider early modern British Empire, see Linda Colley, *Captives: Britain, Empire and the World, 1600-1850* (New York: Anchor Books, 2004); Alison Games, *The Web of Empire: English Cosmopolitans in an Age of Expansion, 1560-1660* (Oxford: Oxford University Press, 2008), 293-299.

³ In comparison, the cost of the military establishment in the American colonies in 1679 has been put at £12,816, between a sixth and a fourth of the nominal annual cost of the Tangier, which was initially set at £70,000 and then reduced to £55,000 in 1668. On the cost of Tangier, see George Louis Beer, *The Old Colonial System, 1660-1754*, 2 vols. (New York: The Macmillan Company, 1912), 1: 115; E. M. G.

that the Crown put into Tangier testified to the importance of the Mediterranean for England's commercial and maritime expansion.⁴ During the decades of the English occupation of Tangier, England's Mediterranean commerce flourished as the merchants of the Levant Company enjoyed their greatest prosperity and as their trade to the Ottoman Empire thrived. Meanwhile, the royal navy was preoccupied by a series of wars against the North African regencies, through which the Crown sought to secure English navigation from attack or interference by Muslim corsairs. The settlement of Tangier promised to project the power of England's restored monarchy into the Mediterranean and to secure English trade and navigation around that sea.

The colonization of Tangier also highlights a critical period for understanding the evolution of the British Empire. Conceptions of the empire as a transatlantic political community were still in their infancy at this time and the commercial and imperial preeminence of the East India Company was still largely unimagined.⁵ Although Tangier

Routh's *Tangier: England's Lost Atlantic Outpost, 1661-1684* (London: J. Murray, 1912), 36-37, 115-116; Colley, *Captives*, 25-30.

⁴ James Mather, *Pashas: Traders and Travellers in the Islamic world* (New Haven: Yale University Press, 2009), 129-130; Sari Hornstein, *The Restoration Navy and English Foreign Trade, 1674-1688: A Study in the Peacetime use of Sea Power* (Aldershot: Scholar Press, 1991).

⁵ It was only the early 1680's that the success of the East-India Company appeared to threaten the century-old patterns of Mediterranean trade and turned it into a direct competitor with the Levant Company, as shipments of silk from Bengal provided a cheap alternative to the Persian silks that Levant merchants shipped to England from Ottoman ports. Both the Genoese consul, Carlo Ottone, and the Florentine resident, Francesco Terriesi, reported in the early 1680's that the arrival of Bengal silks threatened to destroy the Levant Company, see Ottone to Senate, London, 2 February/23 January 1682, Archivio di Stato di Genova (ASG) Archivio Segreto, Lettere Consoli 1/2630, mazzo 3 and Terriesi to Francesco Panciatechi, London, 3/13 September 1683, Archivio di Stato di Firenze (ASF) Mediceo del Principato 4212; for the staggering growth of the East India Company's trade in these years, see K. N. Chaudhuri, *The Trading World of Asia and the English East India Company, 1660-1760* (Cambridge: Cambridge University Press, 1978), 81-82, esp. fig. 3. The pamphlet war that broke out between the two companies revolved around the desire of Levant merchants to trade directly to the Red Sea and the Indian Ocean, see *The Allegations of the Turkey Company and Others against the East India Company, Relating to the Management of that Trade* (n.p., 1681). Dire predictions of the fate of the Levant Company in the face of cheap East Indian goods proved far-fetched. However, while the Levant trade remained prestigious and

seems out of place in the evolution of an empire oriented around England's American colonies, an array of merchants, ministers and foreign observers thought of the colony as integral to a seaborne empire that incorporated "acquisitions" in the Americas, "ports" in the Indies, and "important fortresses in Africa."⁶ The North African colony fulfilled a long-standing ambition among English admirals to acquire a port near or within the Mediterranean that would allow England to maintain a permanent naval presence in that sea.⁷ Yet the settlement of Tangier also raised pressing questions for the organization of English trade and empire. By proclaiming Tangier a free port, the Crown adopted a mercantile policy that departed from the legally defined national and corporate trades that increasingly linked England to its overseas possessions. The Navigation Acts reserved England's colonial commerce for English merchants and ships, but the colonization of Tangier rested on a different approach to the political economy of empire. The history of Tangier thus highlighted the emergence of institutional and ideological boundaries that divorced that colony and the Mediterranean more broadly from England's wider expansion.

The ideological foundations of the occupation of Tangier contributed to the colony's ultimate failure and isolated it within the evolution of an English empire based

profitable, by the early eighteenth century it was clear that the Indian Ocean trade had far more potential, see Ralph Davis, *Aleppo and Devonshire Square: English Traders in the Levant in the Eighteenth Century* (London: Macmillan, 1967), 60-64, 72-74, 223-224; Sonia Anderson *An English Consul in Turkey: Paul Rycaut at Smyrna, 1667-1678* (Oxford: Clarendon Press, 1989), 85.

⁶ For this description of the English maritime empire, see Pietro Mocenigo's dispatch to Senate of Venice of 9 June 1671, in *Calendar of State Papers and Manuscripts Relating to English Affairs in the Archives of Venice*, vol. 37, 1671-1672, ed. Allen B. Hinds (London: Longman, Green, 1939), 55.

⁷ Rafael Valladares Ramirez, "Inglaterra, Tanger y el 'Estrecho Compartido,' los Inicios del Asentamiento Ingles en el Mediterraneo Occidental durante la Guerra Hispano-Portuguesa (1641-1661)," *Hispania* 51, no. 179 (1991): 965-991; Nabil Matar, *Britain and Barbary, 1589-1689* (Gainesville: University Press of Florida, 2005), 42-43.

on the Atlantic and Indian Oceans. The ideas about trade and empire that inspired the acquisition of Tangier and its development as a Crown colony, commercial center and naval harbor linked it to the wider development of the English empire. However, the imperial vision that underlay Tangier proved equally ill suited to the changing form of that empire and to North African politics. The Navigation Acts created an exclusive trading zone that defined the English Atlantic economy, but they also separated Tangier from that emerging colonial system. Meanwhile, throughout the Mediterranean, centuries of religiously inspired war shaped the ideological dynamics of state formation and competition. Christian settlements on the northern coast of Africa like Tangier were inimical to the Islamic states of the Mediterranean and thus particularly vulnerable to the revitalized Muslim polities that emerged or resurfaced in the later seventeenth century as major powers in the Mediterranean basin.⁸ The English settlement of Tangier rested upon ideological conceptions of trade and empire that asserted the primacy of the state for English activity in the Mediterranean. Yet the Crown's jealousy of its sovereignty over Tangier would also preclude it from reaching any accommodation with a resurgent Moroccan empire, leading to the city's eventual abandonment.

⁸ For the relationship between the ideology of holy war and state formation in Morocco, see Johan de Bakker, *Slaves, Arms and Holy War: Moroccan Policy vis-à-vis the Dutch Republic during the Establishment of the 'Alawī Dynasty, 1660-1727* (Amsterdam: s.n. 1991); Amira K. Bennison, *Jihad and its Interpretations in Pre-Colonial Morocco: State-Society Relations during the French Conquest of Algeria* (London and New York: RoutledgeCurzon, 2002), 15-33; J. A. O. C. Brown, "Anglo-Moroccan Relations and the Embassy of Ahmad Qardanash, 1706-1708," *Historical Journal* 51, no. 3 (September 2008), 605. Besides Tangier, several Spanish and Portuguese possessions remained perched on the African coast, including the cities of Oran and Ceuta, Bakker, *Slaves, Arms, and Holy War*, 5-6.

I. *Tangier in England's Maritime Empire*

In 1661, Charles II's marriage to Catherine de Braganza of Portugal brought with it Tangier, Bombay and great hopes for the restored monarchy's global future. For the Portuguese, two poor and vulnerable communities surrounded by enemies were a small price for English support in their war against Spain.⁹ However, for the Earl of Clarendon and his fellow advocates of the marriage alliance between England and Portugal, these two colonies, "situated very usefully for trade," defined the Crown's imperial ambitions as potential commercial centers that would allow England to overcome the advantage the Dutch had secured in the Mediterranean and Indian Ocean.¹⁰ Direct royal administration of Bombay proved fleeting. In contrast, the apparent strategic and commercial potential of a harbor at the Strait of Gibraltar led the English state into one of its most ambitious overseas projects of the seventeenth century.

English expectations for the development of Tangier and Bombay point to a common imperial vision that linked the early histories of these two new possessions. Within this vision, the colonization of Tangier represented a Mediterranean dimension to the global expansion of English empire.¹¹ In early 1662, the propagandist James Howell

⁹ G.L. Belcher, "Spain and the Anglo-Portuguese Alliance of 1661," *Journal of British Studies* 15, no. 1 (Autumn 1975): 67-88; Ronald Hutton, *Charles II: King of England, Scotland and Ireland* (Oxford University Press: Oxford, 1989), pp. 157-160; John Miller, *Charles II* (London: Weidenfeld & Nicolson, 1991), chap. 4, "Dunkirk and a Barren Queen'."

¹⁰ Edward Hyde, earl of Clarendon, *The Life of Edward, Earl of Clarendon* (Oxford, 1759), 2:152. On Dutch commercial dominance in the mid-seventeenth century, see Jonathan I. Israel, *The Dutch Primacy of Trade, 1585-1740* (Oxford: Oxford University Press, 1989), 200-207, 269-279.

¹¹ The older histories that remain the key references for the settlement of Tangier tended not to trace the connections between Tangier and England's global empire, instead concentrating on the colony itself, as in Routh's *Tangier: England's Lost Atlantic Outpost*, which remains the only full length study of the English occupation of Tangier, or focusing on the city's role for English naval history in the Mediterranean, as in Walter Frewen Lord's *England and France in the Mediterranean, 1660-1830* (London: S. Low, Marston, 1901) and especially Julian Corbett's *England in the Mediterranean: a Study of the Rise and Influence of*

defended the acquisition of Tangier and Bombay as parts of a set of global acquisitions that favored English trade and navigation and glorified their possessor, extending “his Fame as well as his power making Him most redoubtable farr & neer.” For Howell, England's new possessions of Bombay, Jamaica, Tangier and Dunkirk fulfilled the classic strategic and economic roles of colonies, providing employment for the country's surplus population while promising to support England's global navigation, fostering trade and industry and tending “to the universall Good of all peeple which is the chiefest Designe & Desire of his Maiesty by being to that end at such extraordinary expences by Sea & Land.”¹²

Howell's account of the advantages of Tangier not only envisioned the city as the key to control over the Strait of Gibraltar, “where the greatest trade of the world is beaten,” but also put the city squarely within a larger conception of English commerce and empire. Howell lauded the benefits that would follow from having “a port of our owne” to supply English ships sailing into the Mediterranean, from which English fleets could sail against both the North African regencies and European enemies. In the early-1670's Tangier's engineer Hugh Cholmley described Tangier as sitting “in the midst of the trading world, upon an Inlet into a Sea that goes near three thousand miles in length,

British Power within the Straits, 1603-1713 (London: Longmans, Green, and Co., 1904). The only historian to consider Tangier in a fully Atlantic context is Stephen Saunders Webb, for whom Tangier was the training ground for the governor-generals that he saw as the primary drivers of the seventeenth-century English Empire; Webb presented his wider thesis in *The Governors-General* (Chapel Hill: University of North Carolina Press, 1979) but only expanded on Tangier's role in *1676: The End of American Independence* (New York: Knopf, 1984), 151-154, 203-4 and especially *Lord Churchill's Coup: the Anglo-American Empire and the Glorious Revolution Reconsidered* (New York: Knopf, 1995), 18-25. For general criticisms of Webb's thesis, see Richard R. Johnson, “Imperial Webb: The Thesis of Garrison Government in Early America Considered,” *The William and Mary Quarterly*, 3rd ser., 43, no. 3 (Jul., 1986): 408-430.

¹² Howell, “A short Discours,” TNA SP 29/52, f. 263v-264r.

& washes the most noble & most polished Countrys of Europe Asia & Africa” and yet at such a distance from England that it provided the only port for English ships passing into the Mediterranean that was not “precarious, & depending on the will of forain Princes.”¹³ Howell similarly saw Bombay as a port that would sustain English navigation and serve as a stepping stone for the conquest “of all those coasts of India, and of Ormus” that would “redound much to the renoun of his Majesty.”¹⁴ The instructions issued to England's new governors at both Tangier and Bombay directed them to establish the cities as commercial centers that would attract both “Our subjects and strangers to restore and trade there.”¹⁵

Howell imagined an English empire rooted in the expansion of royal authority and based on strategically located possessions that would allow England to dominate their respective oceanic spheres. While visions of royal empire proved equally illusory at Bombay and Tangier, the contrasting outcomes of those failures of Crown rule make the comparison of these two colonies all the more compelling. Bombay was turned over to the East India Company in 1667, under whose management it would become a seat of British empire in the Indian Ocean during the eighteenth century. Conversely, efforts in 1661 to create a Morocco Company to trade along North Africa's Atlantic coast failed and Tangier remained under royal control. Behind these diverging trajectories were

¹³ Hugh Cholmley, “Several discourses concerning the interest of Tangier,” British Library (BL) MS Lansdowne 192, f. 85v-86r. Cholmley's “Several discourses” is undated, but its narrative of the history of Tangier extends to early 1672. For the difficulties the English encountered using Italian ports, see Carlo Cipolla, *Il burocrate e il marinaio: La <Sanità> toscana e le tribolazioni degli inglesi a Livorno nel XVII secolo* (Bologna: il Mulino, 1989).

¹⁴ Howell, “A short Discours,” TNA SP 29/52, f. 259v.

¹⁵ William Foster, *The English Factories in India*, vol. 11, 1661-64 (Oxford: Clarendon Press, 1923), 128 and “Instructions for the Earle of Peterborough, Generall of our Army Designed for Tanger in Africa,” TNA CO 279/1, f. 29r-v.

common questions regarding the political economy of overseas trade and the relationship between state and corporate authority. Trading companies were not merely commercial organizations but rather political entities that exhibited sovereign characteristics within their jurisdictions.¹⁶ As state-like bodies, companies were designed to protect and regulate trade where local political conditions appeared to render merchants vulnerable to oppression or competition but where the Crown could not exercise effective authority. Ideological arguments that contrasted the political and commercial conditions of the Mediterranean and Indian Oceans thus underlay the divergent histories of Bombay and Tangier.

Proposals to create a company to trade along the Moroccan coast set off a debate as to whether this company or Tangier should dominate English trade to Morocco. In August 1661, and as preparations began to dispatch an expedition to occupy Tangier, Robert Starr, the English consul at the Moroccan port of Salé, petitioned Charles II for patents granting exclusive trading rights on Africa's Atlantic Coast from Cape Blanco in the south of Morocco to Salé in the north of that country. Starr explained that as a result of his long engagement with them, “the people of that country” were willing to yield up into his “sole possession & power” an island and a castle off the Moroccan coast that would serve as a safe harbor for English ships sailing into the Mediterranean or Atlantic and Indian Ocean, and further requested a garrison of one hundred men, arms and provisions, cannon and £1500 annually out of the customs revenue in order to defray

¹⁶ Philip J. Stern, *The Company-State: Corporate Sovereignty and the Early Modern Foundations of the British Empire in India* (Oxford: Oxford University Press, 2011), passim.

expenses.¹⁷ Starr's petition was referred to the Lords and Commissioners for Foreign Plantations and gained the support of powerful backers. On September 11, 1661 a patent was granted to the Duke of York and a group of prominent merchants and courtiers incorporating them as the Morocco Company along the lines Starr had originally proposed.¹⁸

Although patented, the Morocco Company never came to fruition; instead, the patentees appear to have shifted their attention onto the Company of Royal Adventurers trading to Africa, under whose jurisdiction the Atlantic coast of Morocco would fall in its revised charter of January 1663.¹⁹ However, it is probable that the company was doomed by the vocal opposition it evoked among officials and merchants involved in the settlement of Tangier. For E. M. G. Routh, the only historian to note the proposed Morocco Company and the debate that surrounded it, the rejection of corporate trade deprived Tangier of a proven means to develop trade in an insecure environment and thus of an imperial future comparable to that enjoyed by Bombay under the East India Company. Routh's verdict offers a telling counterfactual in so far as it suggests that institutional organization and not geographic location explains the different fates of

¹⁷ Petition of Robert Starr, 13 August 1661, TNA SP 71/13, f. 107r.

¹⁸ British Library(BL) Sloane MS 3509, f. 4r, "the docket for the Marocco Company endeavoured to be raysed against the wishes of His Lordship." The docket largely mirrors Starr's request, but lists the grantees as "his Highness Royall, Lord Willoughby of Parham, Col. William Legg, Thomas Culling, Alexander Bence, Robert Starr, John Lewis, Philipp Payne of London, Marchants" and explicitly incorporates them as the Morocco Company for 31 years and with "all such clauses & authorities as have beene heretofore graunted in Charters of the like nature."

¹⁹ George Frederick Zook, *The Company of Royal Adventurers Trading into Africa* (Lancaster: Press of the New Era Printing Co., 1919), 13. For the succession of English companies trading to Africa, see K. G. Davies, *The Royal African Company* (London and New York: Longmans, Green, 1957), 38-46.

Tangier and Bombay.²⁰ Yet, opposition to the Morocco Company foreshadowed the problems that would later emerge from the brief coexistence of corporate monopoly and a royal colony in the Indian Ocean. Company domination was no less contested in Bombay than it was in Morocco and, in March 1667, Bombay's governor Sir Gervase Lucas denounced the independent sovereignty the East India Company appeared to enjoy in the Indian Ocean. Lucas complained that the Company's resistance to a port outside its control stifled his efforts to develop the trade of Bombay and advised, "so long as Your Majestie continues that Company, your affaire[s] in these parts will never answer your great designe and noble intention of advancing trade."²¹ The former company factor Henry Gates, who became deeply involved with the struggling settlement, wrote in 1665, "unlesse His Majesty doeth absolutly enorder the Company Presidency and factorys removeall to this place [Bombay], and force the trade hither by keepeing some frigats heere in India, a trade will scarce bee settled as it should bee."²² The fierce reaction provoked by the patenting of the Morocco Company revealed ideological considerations that underlined Charles II's subsequent decision to cede Bombay to the East India Company.

The officials and merchants who wrote against the Morocco Company feared it would compete with Tangier for Moroccan trade and forestall expectations that England's new possession would become an entrepôt for the commerce of North Africa and the Mediterranean. Nathaniel Luke, secretary to Tangier's first governor, the Earl of

²⁰ Routh, *Tangier, England's Lost Atlantic Outpost, 1661-1684*, 20.

²¹ Quoted in William Foster, *The English Factories in India*, vol. 12, 1665-1667 (Oxford: Oxford University Press, 1927), 287-288.

²² Quoted in *ibid.*, 70 .

Peterborough, warned in late 1661 that a company in the “hands of particular men” who had no interest in the success of a city lying outside the limits of their monopoly, would rather aim “to carry the trade to the Moores then to give his Majesties & their nation the advantage thereof.”²³ As Thomas Povey, the treasurer for Tangier and member of the English Council of Trade, similarly reminded his readers, English expectations for the city’s future depended on its transformation into “a free port, & the Scale of the English trade” that would attract foreign trade, undersell neighboring ports and draw the Moroccans into a mutually beneficial commercial relationship with the English. If the Morocco Company sought to trade directly with Moroccan ports, it would convince the Moroccans that “Tanger shall onely remaine as an enemi’s Garrison,” and encourage them to oppose violently an English settlement lacking the trade that alone could “drawe them into any kind of amity.”²⁴

Critically, neither these memorials of Tangier’s officials nor those offered by two separate groups of merchants trading to Morocco made a blanket argument against corporations. Thomas Povey himself had been deeply engaged in schemes to create a company trading to the Caribbean in the late 1650's and joined the patentees of the

²³ “Mr. Luke’s Reasons against the Erection of a Morocco Company,” BL MS Harleian (Harl.) 1595, f. 13v-14r. This memorial is undated, but a copy in Nathaniel Luke’s copybook appears following a document dated 12 September 1661, BL Sloane MS 1956, f. 45r-v. It is not entirely certain if this piece was written by Nathaniel Luke or his brother, John Luke. However, Nathaniel Luke is the more likely author since he had been appointed consul to the ports of Morocco by Cromwell in 1657 and was serving as Peterborough’s secretary when the memorial was written, Helen Andrews Kaufman, “Introduction,” in *Tangier at High Tide: The Journal of John Luke, 1670-1673*, by John Luke (Geneva: E Droz., 1958), 13-14.

²⁴ Thomas Povey, “Reasons against the same [Morocco Company],” BL MS Harl. 1595, f. 14v. Povey’s undated memorial appears between documents dated 21 September and 30 September 1661 in Luke’s copybook, BL Sloane MS 1956, f. 50v-51v.

Morocco Company as a shareholder in the Company of the Royal Adventurers.²⁵

Instead, opponents of the Morocco Company more narrowly questioned whether that corporation was necessary or appropriate for Morocco's political conditions. In this sense, Povey's earlier vocal support for a joint-stock West India Company suggests why he viewed the Morocco Company with scepticism. Disgusted by the unwillingness and inability of the English council of state to support adequately its conquest of Jamaica in 1655, Povey advocated the creation of a company to carry on Cromwell's war against Spain on private funds, marshalling private capital towards purportedly public ends.²⁶

The pamphleteer "Philopatris," who may have been the East-India Company director and political theorist Sir Josiah Child, explained in 1681 that joint-stock companies were political bodies designed to govern trade where the state could not: "there is a necessity of a Joynt Stock in all Foreign Trade, where the Trade must be maintained by Force and Forts on the Land, and where the His Majesty cannot conveniently maintain an Amity and Correspondence by Ambassadors, and not elsewhere."²⁷ According to Philopatris, companies were vital for the protection of trade in the Indian Ocean, where political conditions were unstable and beyond the reach of the English state, but unnecessary wherever the state itself could safeguard trade.

²⁵ Povey's subscription for stock among the Royal Adventurers is recorded in the company's minute book, TNA Treasury 70/75, f. 13r.

²⁶ Povey to Edward D'Oyley, BL Additional (Add.) MS 11411, f. 21r-v. The letter is undated but probably from the fall of 1659. The papers surrounding the proposal for a West India Company are found in BL MS Egerton (Eg.) 2395.

²⁷ Philopatris, *A Treatise wherein is Demonstrated, I. That the East-India Trade is the most National of all Foreign Trades* (London, 1681), 5. For a discussion of the political context surrounding this pamphlet and of its authorship, see Philip J. Stern, "'A Politie of Civill & Military Power': Political Thought and the late Seventeenth-Century Foundations of the East India Company-State," *Journal of British Studies* 47, no. 2 (April 2008): 270-274.

Although Philopatris responded to ideological debates that differed in key respects from that which grew up around the Morocco Company, the pamphleteer's arguments about the relationship between corporate trade and state authority helps to explain why Povey and others opposed the Morocco Company. Philopatris wrote to defend the East India Company against accusations launched by the Levant Company that it had inappropriately monopolized England's trade to the Indian Ocean, a dispute which called into question whether joint-stock or regulated companies were the more effective means to organize England's overseas trade.²⁸ This later contest between regulated and joint-stock companies did not factor into debates over the Morocco Company. Although the Morocco Company was probably conceived as a joint stock, opponents of the company did not make an issue of its institutional organization and instead warned that any form of corporate monopoly would prove to be incompatible with the creation of a free port at Tangier.²⁹ Even so, Philopatris's attack on the Levant Company showed how the Crown's diplomatic and military presence in the Mediterranean negated the need for corporate trade in that sea. Philopatris denied that the Levant Company served any useful purpose precisely because the king's warships could

²⁸ Joint-stock companies operated as unified, centrally-directed corporate bodies, while the members of regulated companies traded individually, within guidelines stipulated by the company. The best discussion of the ideological ramifications of the rivalry between the Levant and East India Companies may be found in Stern, *The Company State*, 54-55. On the commercial collision of the Levant and East-India companies more generally, see A. C. Wood, *A history of the Levant Company* (Oxford: Oxford University Press, 1935), 102-105; K.N. Chaudhuri, *The Trading world of Asia and the English East India Company*, 219, 225-226, 345-346; Mather, *Pashas*, 202-206.

²⁹ Although there is no mention of the form of the company, its membership suggests that it would have been a joint-stock, as does a letter from Nicolas de Clerville to Colbert, in which he records that 'une compagnie de marchands anglosi faict presentement un fond de cinq cens mil livres pour faire un port à Tanger', "Mémoire de Nicolas de Clerville a Colbert," [avant le 26 février] 162, in H. de Castries, P. de Cenival and P. Cossé Brissac, eds., *Les sources inédites de l'histoire du Maroc*, Deuxième série, *Dynastie filalienne; archives et bibliothèques de France* (Paris: Éditions Ernest Leroux, 1922), 1: 30.

sail from Tangier to obtain justice for injuries suffered by English merchants in the Ottoman Empire.³⁰ In this respect, the opponents of the Morocco Company anticipated Philopatris's later arguments. Corporate trade was unnecessary on the Moroccan coast, since the Crown intended to make Tangier the cornerstone of the expansion of its power and prestige.³¹

Philopatris's arguments succinctly expressed widespread views regarding the corporate organization of overseas trade. For example, in 1667, the opponents of the short-lived Canary Company argued that a joint-stock structure was unnecessary for trade to the Canary Islands, where, unlike in the Indian Ocean, there was no need for forts and garrisons.³² Similarly, the opening of a royal proclamation of 1674 that reaffirmed the monopoly of the Royal African Company explained "that traffique with Infidels and Barbarous Nations not in amity with Us, and who are not beholding by any League or Treaty" could only be carried out from forts and factories maintained by a joint-stock company.³³ Conversely, corporate trade was a threat to Crown rule and diplomacy on the Moroccan coast. As Thomas Povey pointed out, if the Morocco Company were to have "power to erect forts & command them, & to manage trade by their owne authority," it

³⁰ Philopatris, *A Treatise wherein is Demonstrated*, 36.

³¹ Philopatris, *A Treatise wherein is Demonstrated*, 37.

³² Caroline A. J. Skeel, "The Canary Company," *The English Historical Review* 31, no. 124 (October 1916): 542.

³³ *By the King. A Proclamation. Whereas it is found by Experience, That Traffique with Infideals and Barbarous Nations not in Amity with us...* (London, 1674).

would be in contradiction to the patents the king had already granted his Governor-General and would prevent him from fulfilling his commission.³⁴

While corporate trade threatened royal authority, its opponents argued that it also appeared inappropriate for the political environment of Morocco. As Povey succinctly advised, Tangier was “to be secured to His Majesty either by force or trade.” The Crown had consequently sought to make Tangier a trading city that could draw Moroccans into amicable commercial relations; the competition of company trading posts would leave Tangier a ‘constant settled charge to his Majesty’ and convince its neighbors that hostile designs underlay its occupation.³⁵ Like Philopatris, the opponents of the Morocco Company also assumed that joint-stock companies were designed to deploy force to protect and advance their trade, but they advised that if the Company used its allowance of military supplies and customs revenue to establish coastal forts, it would only further provoke Moroccan hostility. In this vein, the memorial of one of two groups of merchants writing against the Morocco Company argued that if the English could advantage themselves of Tangier’s location to limit trade along the Moroccan coast to their new port, they could make Tangier into the “the head & fountaine of trade, & the safety & protection of the English marchants.” However, the merchants further warned that, “to erect & build new forts & castles in other places (if it were possible) is the only way to create & stirr up jealousies & provoke the people of that Country to believe, that the English nation intends to enslave them & make a conquest of their countrey.”³⁶

³⁴ Thomas Povey, “Reasons against the same [Morocco Company],” BL MS Harl 1595, f. 15v-16r.

³⁵ Ibid. f. 14v-15r.

³⁶ “The Marchant’s Reasons against the Moroco Company,” *ibid.*, f. 17r. For a comparison with the political significance of forts for the East India Company, see Ian Bruce Watson, “Fortifications and the

Moreover, the “antient traders to Barbary without the straights” warned that the creation of forts was “not feisable, without a national engagement, the Country being populous, that people warlyke, & plentifully furnished with all manner of offensive Arms, horses & ammunition,” and would merely convince the Moroccans that the English aimed at territorial conquest.³⁷

Povey’s sharp dichotomy between “force” and “trade” more broadly echoed a distinction that seventeenth-century English writers regularly drew between empires based on conquest and those based on trade.³⁸ As James Howell had affirmed when he lauded Charles II’s new foreign possessions:

Though the Acquestes aforesayd be a considerable addition to the Honor, grandeur, & interests of his Majestie, yet it is not that, or further Extent of Territories which He aymes at, as much, as at Enlargement of Trade with the security thereof & consequently the Common Good of his marchants & Sea-adventuring.³⁹

Two years later in 1664, the ever-flexible Howell appealed to this reasoning to defend the sale of Dunkirk to France, a transaction that offended ministers and the public who saw the city as a check on French privateering and a bridgehead for future wars on the continent. Howell wrote that there were two kinds of “Forren Possessions,” those “got by the discovery of the Marchant” which become centers of trade and commodity production

'Idea' of Force in Early English East India Company Relations with India,” *Past & Present*, no. 88 (August 1980): 70-87.

³⁷ “The humble reasons of all the marchants that have beene the antient traders to Barbary without the straights,” BL MS Harl 1595, f. 18v-19r.

³⁸ See especially David Armitage, *The Ideological Origins of the British Empire* (Cambridge: Cambridge University Press, 2000), 138-145 and Istvan Hont, *Jealousy of Trade, International Competition and the Nation-State in Historical Perspective* (Cambridge, MA: Belknap Press of Harvard University Press, 2005), chap. 2, “Free Trade and the Economic Limits to National Politics: Neo-Machiavellian Political Economy Reconsidered,” 185-266, *passim*.

³⁹ “A short Discours of the Late Forren Acquests which England holds,” TNA CO 29/52, f. 272r.

and those without commercial benefit but “meerely maintained by Praesidial Forces or Garrison.” While Dunkirk seemed of the later variety and promised only expenses and political jealousies, the American colonies were examples of the former and “ther are great hopes that in Afric *Tanger* will prove so, with other extraordinary advantages besides.”⁴⁰ Cholmley opposed the retention of Dunkirk on parallel grounds, arguing that “as to the inlet that such a place may be unto Conquests upon the Continent, it will be found that England was never so much exhausted, as when our Ancestors raised so many trophies to their victories in France, all which as been since lost with more happiness, I think to an Englishman, then it was ever gained.” For Cholmley, territorial acquisition was a burden compared to the power obtained by commercial might, as demonstrated by the relative fates of Spain and Holland.⁴¹

It would be simplistic, though, to argue that the debate over the Morocco Company reflected fundamentally different approaches to political economy based on the explicit opposition of pacific trade and the commercial aggression of trading companies. The nearly simultaneous rejection of Crown rule in the Indian Ocean and of corporate trade along the Moroccan coast instead points to widespread ideas that trade had to be organized differently in response to diverse political and economic environments.⁴²

Contrasting recommendations for Tangier's development overwhelmingly depended on a

⁴⁰ James Howell, *A Discours of Dunkirk, with some Reflexes upon the Late Surrender thereof...* (London, 1664), 4-5.

⁴¹ “A discourse of Tangier,” BL MS Lansdowne 192, f. 85r.

⁴² Compare Steven Pincus's recent arguments regarding later seventeenth-century political economy in *1688: The First Modern Revolution* (New Haven: Yale University Press, 2010), chap. 12, “Revolution in Political Economy,” 366-399, with Thomas Leng's characterization of mercantilist thought, “Commercial conflict and regulation in the discourse of trade in seventeenth-century England,” *Historical Journal* 48, no. 4 (December 2005), 933-956.

generally unified conception of England's empire as maritime and commercial. Starr's proposal offered a vision for the development of trade to Morocco that did not substantially differ from that of Tangier's proponents, as both imagined fortified ports linking England's global networks of trade to Morocco and the Mediterranean. Similarly, although the East India Company jealousy guarded its monopoly on trade to and from England, it approached the trading world of the Indian Ocean in a different fashion and established its ports as cities open to indigenous merchants and to the private trade of its own factors.⁴³ Upon the East India Company's accession to Bombay, its factors suggested the city be turned into a free port in order to attract Indian merchants, citing the success of the Italian ports of Livorno and Genoa to illustrate the value of low duties and commercial openness for the development of port cities.⁴⁴

The use of force was nevertheless implicit even in a self-consciously maritime empire: at issue was how it was to be used and with whom lay the authority to wield it. Tangier's governors repeatedly emphasized their efforts to induce the Moroccans to peace by establishing mutually beneficial trading relationships and just as frequently affirmed that their territorial aspirations extended no farther than the surrounding fields that would provide sustenance for the garrison and room for outworks to safeguard it.⁴⁵

They were equally convinced that only naval power and frigates cruising before

⁴³ Child, *A Treatise wherein is Demonstrated*, 17-18 and Philip J. Stern, *The Company-State*, 85-87.

⁴⁴ Foster, *The English Factories in India*, vol. 12, 1668-1669 (Oxford: Clarendon Press, 1927), 211, quoted in Louis Dermigny, *Echelles, échelles et ports francs au Moyen Age et aux temps modernes* in *Les grandes echelles*, 3^e partie, *Période contemporaine et synthèses générales*, Recueils de la société Jean Bodin, 34 (Brussels: Editions de la librairie encyclopédique, 1974), 567, n. 976. See also Ruby Maloni, 'Surat to Bombay: Transfer of Commercial Power', *Itinerario* 26, no. 1 (2002): 65.

⁴⁵ Earl of Peterborough, Tangier, 2 April 1662, TNA CO 279/1, f. 108v; Earl of Middleton to Arlington, Longleat House, Coventry Papers, vol. 70, Tangier, 12 October 1673, 52r; Earl of Inchiquin, "Narrative of the state of Tangier from April 1678 to April 1680," BL Sloane MS 1952, f. 23v.

Moroccan ports would restrain Muslim corsairs and induce Moroccans to come to Tangier to trade.⁴⁶ On the other hand, suggestions that Tangier would be a foundation for conquests in North Africa were rejected in favor of the commercial and maritime aspirations for the city. During the summer of 1661, the Lords Commissioners for Tangier denied the request of the Lord Peterborough, Tangier's first governor, for a large body of cavalry, on the basis that they intended "not to make a warr with the Moores" but to cement a peace with them through trade.⁴⁷ Tangier's governors and officials hoped to expand the colony, but they generally sought only to control enough land to make Tangier self-sustaining, rather than aiming for wider territorial conquests.⁴⁸ The reaction of the Earl of Sandwich, to the merchant James Wilson's plans for a territorial empire expanding outward from Tangier highlighted the maritime vision that dominated English expectation for the city. Writing in late 1661, Wilson emphasized Tangier's strategic and commercial importance before continuing that he did not "thinke his majestie will content him selfe with one Port but rather endeavor to people all the coast to the East as far as

⁴⁶ See "Description of Tangier," TNA CO 279/33, f. 136r (anonymous and undated, this document is probably the report on Tangier that Peterborough was ordered to draw up when he was replaced by the Earl of Teviot in 1663, see "Instructions for the Earl of Tiviott," TNA CO 279/2, f. 24r-v); Journal entry of the Earl of Sandwich, 4 September 1668, Mapperton House, Journal of the First Earl of Sandwich, vol. 8, 520, 526; Lord Belasyse to the Lords Commissioners for Tangier, BL Sloane MS 3509, f. 104r; Henry Sheeres to Colonel Palmes Faireborne, Tangier, 5 December 1678, Bodleian Library (Bodl.) MS Rawl 342, p. 379.

⁴⁷ This is recounted in "Mr. Luke's reasons against the Erection of a Morocco Company," BL MS Harl. 1595, f. 13r. Peterborough's negotiations over the size of Tangier's garrison may be followed in "Propositions Humbly offered to the Lords Comittees appointed out of his Majesties most Honorable privy councill to consider upon the affaires of Tangier in Affrica" and "The Necessity of horse," BL Sloane MS 1956, f. 30v-33v, 38r-v. All of these writings are undated, but "The Necessity of horse" follows an order from the King in Council of 26 July 1661.

⁴⁸ Cholmley to William Coventry, Tangier, 2 October 1670, NYRO ZCG V 1/1/3, p. 156; Cholmley, "Several discourses concerning the interest of Tangier," BL MS Lansdowne 192, f. 86v, 96v; John Bland to Joseph Williamson, Tangier, 20 July 1676, TNA CO 279/19, f. 205r

Triply to the south as far Saphy.’⁴⁹ Commanding the expedition that took possession of Tangier, Sandwich cautioned in response to Wilson's projections:

the designes proposed, mee thinkes are Ill considered, for, to propose the possessing Africa from Gamboa to Tripoly is a vast thing, and one that sees what charge & trouble a Towne is possest that is given and delivered up, will Conceive a great deale more difficulty to posses Townes we must fight for, and not vary certain to prevaile neither.⁵⁰

Sandwich by no means rejected the use of force to increase and project English power; instead, he distinguished sharply between England's interest to develop its maritime power and dreams of territorial empire. He thus intended to concentrate upon the improvement of Tangier itself which would “keepe all europe in Awe,” and to accomplish the goal of creating a magazine and free port that could draw off the trade not only of other cities of North Africa but also established ports like Livorno.⁵¹ He further urged that after securing Tangier the English should aim to conquer Ceuta from the Spanish in order to gain complete control of the Strait, such that once the “Kings Sovereignty maintaynes the Seas, you might put what Conditions you Please upon all the World, that passe through the Straights.” From these opening steps, the English could then seek “to gaine both ways, upon the Coast of Barbary, the places that are seated upon

⁴⁹ James Wilson, Lisbon, 5 October 1661, BL Sloane MS 3509, f. 11r. It is unclear what point Wilson had in mind as the southern limit of his proposed empire. He described 'Saphy' as being 'on our Plantations now in gamboa', but it seems likely he was referring to the Moroccan city of Safi, *ibid.*, f. 12r. See also Alison Games's discussion of Wilson's proposal in *The Web of Empire*, 295-296.

⁵⁰ “A coppie of a discourse of Barbary sent his Royal highness by my Lord sandwich,” 1662, BL Sloane MS 3509, f. 25r.

⁵¹ *Ibid.* f. 25v

the Rivers, and are places of traffique, still preserving peace with the Main Land, soe necessary for Tanger.”⁵²

Sandwich's hope that Tangier would serve as the foundation of a maritime empire dominating the Mediterranean exemplified widespread expectations that control of the city might be only the first step towards domination of the Mediterranean. Admiral John Lawson warned in 1661 that Tangier was a place of such importance that if the Dutch should get hold of the city they would be able “keep the place against all the World, and give the law to all the trade of the Mediterranean,” a verdict that, according the Clarendon, left Charles II “very much affected.”⁵³ Shortly thereafter, Giovanni Luca Durazzo, Genoa's ambassador to the newly restored monarchy, reported that England's commitment to Tangier echoed Henry's VIII's ambition to develop his naval power in order to “open and close the ocean at the strait of Calais,” a goal Charles II now aimed at “with more reason” through control of the Straits of Gibraltar.⁵⁴ Howell meanwhile thought that Tangier provided a harbor from which a fleet could control the Strait of Gibraltar, and “give law to all who pass or repasse that way.”⁵⁵ Cholmley likewise

⁵² Ibid, f. 27r.

⁵³ Clarendon, *The Life of Edward, Earl of Clarendon*, 2: 151.

⁵⁴ “Insomma se altre volte Enrico 8 in concorrenza de i due monarchi suoi coetanti pose per impresa il rast[r]ello, con cui pretese aprire, e chiuder l'oceano nelle fauci di Cales; hora con più ragione par[sic] che pretenda lo stesso il Rè Carlo in quello di Gibilterrea,” ASG Archivio Segreto, Relazioni dei Ministri 1/2717, p. 348. A copy of the “Relazione” of Durazzo is in the BL Add. MS 38884. See also Onorato Pastine, “Genova e l’Inghilterra da Cromwell a Carlo II: orientamento politico economico,” *Rivista storica italiana* 3 (1954): 343. As the Crown prepared to evacuate Tangier in 1683, the Genoese consul in London, Carlo Ottone, recalled that with the acquisition of the city, Charles “pensò di fortificarlo non solo per faccilitare il traffico à suoi sudditi come per rendersi padrone di quel stretto,” Carlo Ottone to Senate, 13/23 August 1683, ASG Archivio Segreto, Lettere Consoli 2630.

⁵⁵ Howell, “A short Discours,” TNA SP 29/52, f. 262v. Howell referred explicitly to maritime sovereignty only in conjunction to Dunkirk and its usefulness “to the support & maintenance of his Majestie Right to the Dominion of the Narrow Seas (the faires flower in the Crown of England) haveing ports on both sides,” f. 266r.

recalled that Tangier's English proponents dreamed of establishing a toll over traffic through the Strait of Gibraltar.⁵⁶

It was French engineer Nicolas de Clerville who put into its full ideological perspective the prospect that the acquisition of Tangier might be only a first step towards establishing English sovereignty over the Strait. He warned that if rumors that the English planned to seize the Alhucemas Islands were correct, it would be “a thing prejudicial to all the princes who have States on the Mediterranean sea” and a means by which “these new comers would presume to make for themselves always some grander presumption of the right to their pretended monarchy of the sea, which ambition will seem much more ridiculous when they will not have an inch of land or of coast.” Territorial possessions, however, would allow them “to sustain as well as to color their unjust pretentions.”⁵⁷ Clerville thus feared that further English acquisitions within the Mediterranean would give England a legal basis to claim sovereignty over the mouth of the Mediterranean, in a manner parallel to that which it claimed sovereignty over the ill-defined “British Seas.”⁵⁸

⁵⁶ Cholmley, “Several discourses concerning the interest of Tangier,” BL MS Lansdowne 192, f. 12r.

⁵⁷ Louis XIV wrote to his ambassador in London, the Comte d'Estrades in early 1662 to advise him, “j'ai sujet d'appréhender, en conciliant ces deux avis, que les Anglois ne veuillent s'emparer de ces Postes- là, pour avoir un port à donner la main à Tanger, tenir mieux les deux embouchures du Détroit de Gibraltar, & peut-être enfin y établir un péage, à l'exemple du Roi de Dannemarc sur celui du Sundt,” see *Lettres, mémoires et negociations: de monsieur d'Estrades...* (London [i.e. The Hague], 1743), 1:246; Corbett, *England in the Mediterranean*, 2: 324-325. Clerville advised that France's diplomatic representatives in England do everything possible to stop these English plans “comme une chose prejudiciable à tous les princes qui ont des Etats sur la Mediterranée, et comme un moyen par lequel ces nouveaux venus presumeroient de se faire tousjours quelque plus grande presumption de droict à leur pretendue royauté de la mar, dont l'ambition samblera bien plus ridicule quand ils n'y auront pas un poulce de terre ny de coste, que quand ils s'y seront avancés par un establissement, si petit qu'il soit, et qu'ils y auront un port ou rade, par lequel ils pourront soustenir aussy bien que colorer leurs injustes pretensions,” *Memoire de Nicolas de Clerville*, [avant le 26 février] 1662, in *Les sources inédites de l'histoire du Maroc*, 1: 27.

⁵⁸ For juridical arguments regarding state sovereignty over coastal waters, their origins and their intellectual and imperial significance, see Thomas Wemyss Fulton, *The Sovereignty of the Sea* (Edinburgh: W. Blackwood, 1911); Armitage, *The Ideological Origins of the British Empire*, chap. 4, “The Empire of the Seas, 1576-1689.”

Writing to Colbert, Clerville expanded on this point when he warned that if the English gained control of additional footholds in the Mediterranean “they would not only by this means establish a new right to their claims to the empire of the Mediterranean as well as of the Ocean,” but would also be able to establish a toll at Tangier by virtue of controlling both sides of the Strait of Gibraltar.⁵⁹ This toll might fall on traffic passing Tangier or upon the trade to the Levant, but in either case it posed a threat to France, first putting the French king to the shame of being seen as tributary to the English and secondly threatening his subjects' commerce in the Levant, already outpaced by English competitors.⁶⁰ Uniquely, Clerville explicitly saw Tangier as a base from which England could make a formal claim to sovereignty and empire over the mouth of the Mediterranean.

The prospect that possession of Tangier would allow England to exercise sovereignty over the mouth of the Mediterranean proved misplaced. Rumors that English ministers and naval officers thought to seize the Alhucemas Islands seem in fact to have rested not with English plans, but on the activities of a knight of Malta then in London who was looking for state backing for the occupation of an uninhabited island on the coast of Africa.⁶¹ As Henry Rumbold, the former English consul at Cadiz later pointed

⁵⁹ “...il a esté représenté à Sa Majesté que, s'il faisoient, ainsy qu'ils le peuvent faire et que leur interest le comporte, ils pourroient non seulement se faire par ce moyen un nouveau droit à leurs pretentions de l'empire de la mer Mediterranée aussy bien que de l'Océan, mais aussy pourroient-ils se rendre tellement les maistres des deux emboucheures du destroit de Gilbratar qu'avec les forces qu'ils ont à la mer ilz pourroient etablis un péage à Tanger, à la manière de celui qui se paye dans le Sundt à Copenghagen,” *Mémoire de Nicolas de Clerville a Colbert, [avant le 26 février 1662], in Les sources inédites de l'histoire du Maroc*, 1: 29-30.

⁶⁰ *ibid.*, 1: 30.

⁶¹ Durazzo reported that a “Cavagliere di Malta- Italiano molto esercitato nella navigazione del mediterreaneo” sought to interest him in his project to take possession of “un Isola dishabitata sopra Le Coste d'Africa in tale opportunità di seno, e di sito, dove con picciole trincee si sarebbe potuto stabilire

out, it was naive to think that England could control access to the Mediterranean when Spain at its military height had failed to obtain that same objective.⁶² At the mercy of winds, fog and aggressive tides, no sailing fleet could realistically expect to control the Strait.⁶³ Hugh Cholmley similarly recalled cautious voices that warned, “exacting tribute upon trading vessels was a thing of so universal a consequence as not to be maintained by the power of a single nation.”⁶⁴ In a sea where competing empires and states collided, domination over the Strait of Gibraltar represented an unsustainable extension of English sovereignty.⁶⁵

porto sicure contro le tempeste, e difesa inespugnabile contro à Corsari,” ASG Archivio Segreto, Relazioni dei Ministri 1/2717, 51. Clerville reported that he had been informed by the Comte d'Estrades that an Italian knight named Muti proposed in late 1661 that England occupy the Alhucemas islands, see the “Mémoire de Nicolas de Clerville” [avant le 26 février] 1662, in *Les sources inédites de l'histoire du Maroc*, 1: 26-27. Henri de Castries suggests that this is Ferdinand-Cosme Muti, a knight of Malta and it certainly seems probable that Muti is the same knight with whom Durazzo met. A letter from Louis XIV to d'Estrades states that Clerville had suggested that Muti travelled to England to present his project after it was rejected in France, Louis XIV to le Comte d'Estrades, 26 February 1662, in *Lettres, mémoires et negociations de Monsieur le Comte d'Estrades...*, 1: 246.

⁶² Bodl. MS Carte 69, f. 388r. This anonymous and undated memorial offers a lengthy, informed and bitter critique of the anonymous *A Discourse Touching Tangier* and was written in response to a letter from a “Wm. S” of Hamburg date August 2, 1680. The author’s reference to his services to the Spanish navy during the Interregnum confirm that he is Henry Rumbold, who further mentioned in a petition to James II that he had written a response to *A Discourse Touching Tangier* and presented it to the king’s ministers. See Horace Rumbold, “Notes on the History of the Family of Rumbold in the Seventeenth Century,” *Transactions of the Royal Historical Society*, 6(1892): 162, n. 2. The author of *A Discourse Touching Tangier* was the engineer Sir Henry Sheeres. Jonathan Scott confirms Sheeres’s authorship of the pamphlet in *When the Waves Ruled Britannia: Geography and Political Identities, 1500-1800* (Cambridge: Cambridge University Press, 2011), 111, n. 88.

⁶³ See also George Hills, *Rock of Contention: A History of Gibraltar* (London: Robert Hall & Company, 1974), 207-208.

⁶⁴ Hugh Cholmley, “Several discourses concerning the interest of Tangier,” BL MS Lansdowne 192, f. 85r. Nevertheless, Pietro Mocenigo reported in 1668 that there was talk in London of enforcing a duty on all ships passing through the Strait of Gibraltar, see his dispatch to the Venetian Senate of 7 September 1668, in *Calendar of State Papers and Manuscripts Relating to English Affairs in the Archives of Venice*, vol. 35, 1666-1668, ed. Allen B. Hinds (London: Longman, Green, 1935), 264.

⁶⁵ William Petty would later balance his argument for England’s expansive dominion over the British Seas by writing, “If the King of France, The King of Spayne, & Duke of Tuscany, could arrive to the like power [to protect all shipping] in the Mediterranean from the Straights mouth to Malta, That the same bee allowed him also” and continuing to allow for Venetian and Ottoman dominion over the eastern Mediterranean, see

At a time when the conception of the British Empire as a transatlantic political community was still in its infancy, descriptions of England's overseas empire centered not on an emergent imperial polity but on a maritime empire marked by its commercial and naval power.⁶⁶ As the only English port near the Mediterranean, Tangier appeared vital for the protection of English navigation in that sea as naval wars against the North African regencies established the near permanent presence of royal fleets there.⁶⁷ Tangier's advocates further linked the city's naval role to its wider place within a trading empire. As the engineer, Sir Henry Sheeres, was later to ask, defending Tangier and its role in English commercial and maritime strategy, "What is it has rendered *England* so formidable, so rich, and so renown'd a Kingdom; but the strength of our Navyes, and Universality of our Commerce?" Continuing to describe the "*Machin*" of commerce upon which England's power rested, Sheeres further asked his readers, "because there are many various Wheels and Motions therein, why should not *Tanger* be esteem'd among the principal of those movements, which keep this vast Engin going?"⁶⁸ Tangier's strategic location thus made it appear central to the development of England's maritime and commercial empire.

"Dominion of the Seas," in *The Petty Papers: Some Unpublished Writings of Sir William Petty*, ed. Marquis of Lansdowne (London: Constable & Company, 1927), 1: 237.

⁶⁶ See Armitage, *The Ideological Origins of the British Empire*, passim. See also David Davies, "The Birth of the Imperial Navy? Aspects of Maritime Strategy, c. 1650-90," in *Parameters of British Naval Power, 1650-1850*, ed. Michael Duffy (Exeter: University of Exeter Press, 1992), 24. In 1691 Henry Sheeres composed the detailed outline of a set of naval essays, the last of which proposed "a Scheme & Modell of a Maritime Monarchy" that would give England not only "a Dominion of the Narrow Seas, but to the wide Ocean," Bodl. MS Rawl. D 147, f. 67r.

⁶⁷ Howell, "A short Discours," TNA SP 29/52, f. 262r.

⁶⁸ [Sir Henry Sheeres], *A Discourse Touching Tanger: In a Letter to a Person of Quality* (London, 1680), 10-11

II. *Tangier and the Navigation Acts*

How Tangier was to fit within the “vast Engin” described by Sheeres proved a contentious question. Clearly, the city’s development depended on its ability to attract trade and a trading community: as the Secretary of State, Sir Edward Nicholas, wrote the Earl of Peterborough, “it must be trade & Commerce that must improve the interest of that important Place.”⁶⁹ While some hoped that the city would allow England to control navigation through the Strait of Gibraltar, there were wider expectations that Tangier would become a center for trade into the Mediterranean and a new entrepôt for “the commerce of the Indies.”⁷⁰ Howell’s account of Tangier advised that if a mole could be constructed to improve the harbor, Tangier might prove not only “a fort, & a place of fastness but also for a Mart or Mercantile towne for Commerces.”⁷¹ The English consul in Lisbon, Thomas Maynard echoed a widespread view when he wrote, “Tangere is Situate as convenient for trade as any place in the world” and could become both a magazine for trade to the Levant and a port to attract Spain’s trade from the West Indies.⁷²

However, prospects that Tangier would serve as a nexus for trade between the Mediterranean and Atlantic Ocean exposed emerging legal and institutional boundaries

⁶⁹ Edward Nicholas to the Earl of Peterborough, Whitehall, 17 May 1662, TNA SP 44/1, 51.

⁷⁰ Giovanni Cornaro to Doge and Senate, March 15, 1662 in *Calendar of State Papers and Manuscripts Relating to English Affairs in the Archives of Venice*, vol. 33, 1661-1664, ed. Allen B. Hinds (London: Longman, Green, 1935), 119. The English consul in Lisbon, Thomas Maynard, similarly thought that “Tangere is Situate as convenient for trade as any place in the world” and could become both a magazine for trade to the Levant and a port to attract Spain’s trade from the West Indies, Thomas Maynard, Lisbon, 8/18 December 1661, TNA SP 89/5, f. 73r.

⁷¹ Howell, “A short Discours,” TNA SP 29/52, f. 263r.

⁷² Thomas Maynard, Lisbon, 8/18 December 1661, TNA SP 89/5, f. 73r.

that redefined maritime space around the world. The author of *A Description of Tangier* praised Tangier as a site capable of securing England's "Indian commerce" and dominating access to the Mediterranean, as well as a potential free port "to which all Nations on this side the Line may be glad to have addressed themselves."⁷³ For this author "the Line" differentiated Europe and the Mediterranean from the wider world, even as his account of Tangier's advantages portrayed it as a city ideally positioned to link the diverse strands of English and world trade.⁷⁴ By the mid-seventeenth century, the weight of European diplomacy and treaties had begun to be intermittently felt in North America and the Caribbean. However, as state-building bridged some of the institutional and political divisions between Europe and America, commercial legislation began to define a distinct colonial economy. The author's delineation of European and Atlantic trade thus echoed the mercantile divisions created by the Navigation Acts after 1651 and raised the broader question of how and where Tangier was to fit into England's trading empire.

England's previous colonial experiences shaped expectations and plans for the development of Tangier.⁷⁵ James Wilson thought the occupation of Tangier heralded a process of plantation and conquest that would create an African empire radiating outward

⁷³ *A Description of Tangier, The Country and People adjoyning with an Account of the Person and Governance of Gayland, the present Usurper of the Kingdome of Fez; And a short Narrative of the Proceedings of the English in those Parts* (London, 1664), 7.

⁷⁴ On the "lines of amity" in the British Atlantic, see Ian K. Steele, *The English Atlantic, 1675-1740: An Exploration of Communication and Community* (Oxford: Oxford University Press, 1986), chap. 10, "Send Peace and War beyond the Line, 1667-1739," passim and Eliga H. Gould, "Zones of Law, Zones of Violence: The Legal Geography of the British Atlantic, circa 1772," *The William and Mary Quarterly* 60, no. 3 (July 2003): 471-510.

⁷⁵ Alison Games, *The Web of Empire*, 289-299.

from Tangier and yielding England “more then either east or west indies.”⁷⁶ Less grandly, Hugh Cholmley accounted for Tangier's uncertain beginnings when he advised that Tangier was “much out of Order for want of Civill government yet no more then is usuall to all plantations in their beginning.”⁷⁷ Arguments that garrison government stifled Tangier's commercial development echoed complaints that the preservation of martial law in Jamaica long after the island's conquest stymied its colonization and development.⁷⁸

Such explicit comparisons between Tangier and England's wider empire were actually rare. Rather than reflecting English experience around the Atlantic or Indian Oceans, English thinking about Tangier and its development overwhelmingly revolved around models that oriented the city towards the trading world of the Mediterranean. The author of a set of recommendations for the improvement of Tangier from the mid-1660's thus echoed Cholmley when he called for the creation of a civil government at Tangier, but looked to Livorno, Genoa and the cities of Flanders to demonstrate the importance of civilian government and justice for the economic development of towns.⁷⁹

⁷⁶ James Wilson, Lisbon, 5 October 1661, BL Sloane MS 3509, f. 12r.

⁷⁷ Cholmely to Bathurst and Upton, 4 March 1665, NYRO ZCG V 1/1/1, 46. Cholmley later recommended “reducing as much as may bee the Souldier into the Cittizan,” while the merchant John Bland advised Samuel Pepys in 1666 that Tangier was “never likely to come to anything while the soldiers govern all and doth not encourage trade,” “Proposalls made by Sir Hugh Cholmley concerning Tangier,” TNA CO 279/8 and *The Diary of Samuel Pepys*, vol. 7, 1666, ed. Robert Latham and William Matthews (London: G. Bell and Sons, 1972), 109.

⁷⁸ On calls for civil government in Jamaica falling its conquest, compare the arguments of Stephen Saunders Webb, *The Governors-General*, 196 and Carla Gardina Pestana, “Mutinies on Anglo-Jamaica, 1656-60,” in *Rebellion, Repression, Reinvention: Mutiny in Comparative Perspective*, ed. Jane Hathaway (Westport: Praeger, 2001), 72-77.

⁷⁹ “Memorialls for the Improvement of Tanger,” TNA CO 279/33, f. 140r. This memorial is undated and unsigned, but was written before Tangier received its charter and may be the work of John Bland, since its recommendations closely resemble those made by Bland when he became mayor of Tangier in 1668.

The development of Tangier as a free port further highlighted the Crown's commitment to creating a city that would become a center for trade passing into the Mediterranean. Free ports occupied an important place in seventeenth-century economic thinking and were central to the political economy of the early modern Mediterranean where rulers responded to the sea's fiercely competitive commercial environment by attracting foreign merchants and shipping through a combination of low duties and favorable trading conditions.⁸⁰ For example, the instructions issued to the Earl of Peterborough as the first governor-general of Tangier emphasized that the transformation of the city into a trading hub and free port lay at the center of the Crown's wider aspirations for its new possession. After explaining that he had put himself “to this great charge for making this addition to our Dominions” in order “to gaine to our subjects the trade of Barbary & enlarge our Dominions in that sea & advance thereby the Honor of our Crowne & the Generall comerce & weale of our subjects,” Charles II ordered Peterborough to announce that “no dutys Customs, or other taxes whatever” would be laid on goods imported or exported from Tangier, the city remaining a free port for five years. Peterborough was further directed to consider what means would most effectively

⁸⁰ Paul Masson, *Les ports francs: d'autrefois et d'aujourd'hui* (Paris: Librairie Hachette, 1904) and Louis Dermigny, *Escalaes, échelles et ports francs*, chap. 5, “Échelles et ‘Nation’,” 446-520, *passim*. For the free port of Livorno, see Lucia Frattarelli Fischer, ‘Livorno città nuova: 1574-1609’, *Società e Storia* 46 (1989): 873-893; eadem., “Livorno, 1676” in *La Toscana nell'età di Cosimo III*, ed. Franco Angiolini, Vieri Becagli, and Marcello Verga (Florence: EDIFIR, 1993), 45-66. The only study to compare Tangier to other Mediterranean free ports is Thomas Allison Kirk's, *Genoa and the Sea: Policy and Power in an Early Modern Maritime Republic, 1559-1684* (Baltimore: Johns Hopkins University Press, 2005), 193-196. For free ports in English economic thinking, see Thomas Leng's “Commercial Conflict and Regulation,” 942, 946-947.

induce “our subjects and strangers to reside and trade” there.⁸¹ The Crown intended Tangier to be an open city that would attract foreign merchants and their trade.

The English thus sought to create a cosmopolitan trading center that more closely resembled the East-India Company's new cities of Bombay and Madras than it did Atlantic colonies like Jamaica or Virginia. However, rule over a free port and free city presented a unique set of challenges. The charter granted to Tangier in 1668 affirmed that it would be a “free-city,” whose corporation included all the city's Christian residents; foreigners were admitted to Tangier's common council and to official positions, though not without controversy.⁸² The nomination of the Genoese Carlo Antonio Soltrani to Tangier's first common council was greeted by a “general cry” of “Noe Soltranye, noe Stranger,” from the inhabitants and freemen of the city. Asked why they rejected his nomination, the voters answered, “they were free to choose whoome they thought fitt and would have none butt English Men in the Common Councill.”⁸³ The Earl of Sandwich, then in Tangier to deliver the city its new charter, noted that this reaction caused some unease among the foreigners living at Tangier, who were as much freemen of the city as the English but were now deprived a voice in city government. Sandwich hoped that the creation of a civil government at Tangier and the admission of strangers to it would attract merchants and inhabitants to the city and thus urged the city's officials to

⁸¹ “Instructions for the Earle of Peterborough, Generall of our Army Designed for Tanger in Africa,” TNA CO 279/1, f. 29r-v.

⁸² A copy of the charter granted to the city of Tangier is contained in the entry book of the city's Court of Records and Sessions, TNA CO 279/45.

⁸³ See the register of the proceedings of the Corporation, 21 August 1668, TNA CO 279/39, f. 2r.

overcome their impasse. A compromise was then reached whereby Soltrani would be the first man nominated to the common council in the next year.⁸⁴

Although the controversy over the nomination of Soltrani to Tangier's common council shows that the English struggled to govern the diverse population of Tangier, its resolution testifies to the intention of Charles II and his ministers to create a city that would succeed in the commercial environment of the Mediterranean. In the wake of a clash between Tangier's mayor and lieutenant-governor late in 1668 over their relative authority to govern the city, Tangier's new governor, the Earl of Middleton, was issued instructions that emphasized that the king had incorporated the city, "as the most likely Meanes to advance our Free-Port, diminishe our Charge, and invite Inhabitants and Commerce thither: Which were the Only Ends aimed at by us, in possessing that Place, and making a mould there."⁸⁵ By the mid 1670's, the numbers of foreigners within Tangier rivaled or exceeded the city's civilian English population. In 1676, as comptroller of the king's revenue at Tangier, John Bland made a survey of Tangier's inhabitants. Among the 130 "strangers" living in Tangier, Bland listed 4 Dutch, 45 French, 6 Portuguese, 17 Italians, 51 Jews and 5 "Moorees." Conversely, there were 129 "Cittizens."⁸⁶ The substantial Catholic contingent within Tangier's garrison and civilian population, as well

⁸⁴ See the 27 August and 28 August 1668 journal entries of the Earl of Sandwich, Mapperton House, Journal of the first Earl of Sandwich, vol. 8, 475-477. Sandwich described Soltrani as a "rich & a witty man," and he also served as the Genoese consul at Tangier, 26 August 1668 journal entry, Mapperton House, Journal of the first Earl of Sandwich, vol. 8, 446 and letter of Soltrani to the Genoese government, Tangier, 20 November 1669, ASG Giunta del Traffico 4.

⁸⁵ "Additional Instructions which may bee given to the Earle of Middleton," August 1669, TNA CO 279/12.

⁸⁶ Since Tangier's charter allowed non-English inhabitants to become freemen of the city, the precise breakdown of Tangier's population is unclear; however, strangers made up at least sizeable portion of Tangier's civilian population, "An Abstract of the State of the Citty and Garrison of Tanger," 30 December 1676, TNA CO 279/19.

as its Jewish residents, ensured a measure of religious toleration within the city.⁸⁷

Uniquely, Tangier was also granted a court merchant comparable to French and Italian tribunals that operated according to the law merchant. As an anonymous Spanish account of the city emphasized, “neither the city of London, with its great emporium of merchandise, nor any other city in the British dominions” possessed such an institution.⁸⁸ Since courts merchant had disappeared in an England dominated by the common law, the creation of the court at Tangier testified not only to the Crown's commercial aspirations for the city, but also to its intention to integrate the city into the culture and political economy of the Mediterranean.⁸⁹

By opening Tangier to foreign merchants and exempting goods bought and sold in the city from customs and most duties, the Crown drew on the example of Mediterranean free ports and especially the success of Livorno, which had become one of the chief trading ports of the Mediterranean under the patronage of the grand dukes of Tuscany. In the seventeenth century, Livorno emerged as the focal point of English trade in the Mediterranean as it became a distribution centre where exports of manufactured and colonial products could be offloaded and reshipped and where return cargoes of Italian and Levantine goods could be procured.⁹⁰ Although English observers accented Livorno's

⁸⁷ William Bulman, “Constantine's Enlightenment: Culture and Religious Politics in the Early British Empire, c. 1648-1710” (PhD Diss., Princeton University, 2009), 96-112.

⁸⁸ “Es este privilegio tan grande que no le goza ni aun la ciudad de Londres, con ser tan grande emporio de mercancías, ni otra ciudad alguna de los dominios británicos,” in Chantal de la Vérone, ed., *Tanger sous l'occupation anglaise; d'après une description anonyme de 1674* (Paris: P. Geuthner), 74.

⁸⁹ Kelly de Luca, “Beyond the Sea: Extraterritorial Jurisdiction and English law, c. 1575- c. 1640” (PhD Diss., Columbia University, 2008), p. 55-69.

⁹⁰ Gigliola Pagano de Divitiis, “Il porto di Livorno fra Inghilterra e Oriente,” *Nuovi studi livornesi* 1 (1993): 43-87; eadem., *English Merchants in Seventeenth-Century Italy*, trans. Stephen Parkin (Cambridge: Cambridge University Press, 1997), passim.

favorable customs regime, the relative protection from the Inquisition that the Grand Dukes extended to foreign merchants highlighted the commercial and civic openness that the English sought to recreate at Tangier.⁹¹ Wilson and Sandwich both imagined Tangier replacing Livorno as an entrepôt for Mediterranean trade, while George Downing advised Clarendon that if the king were to make Tangier “as Legorn a place for all nations to lay up their goods in upon very little or no custome. . . it may grow a very wonderfull & considerable place.”⁹² The example of Livorno was especially attractive to English officials as it illustrated that an open and inviting port could flourish even without a hinterland. In 1670, Hugh Cholmley advised William Coventry that following his discussions with Tangier's merchants, he was increasingly optimistic that the city could be made “a place of Trade,” noting that “it is not the Continent of Italie makes Ligorne flowrish, by takeing off the Commodities that are brought thether, ten parts for one being transported unto other places.” Instead, the dukes of Tuscany had used offers of low rents and excellent port facilities to draw merchants and trade to their free port, knowing that “it was a Conflux of people that much enrich the towne.”⁹³ For the length of its possession of Tangier, the Crown similarly sought to create a regulatory and political

⁹¹ For a recent summary of the importance of religious toleration and commercial privileges to the development of Livorno, see Lucia Frattarelli Fischer, “La Livornina: alle origine della società livornese,” in *Livorno, 1606-1806: luogo di incontro tra popoli e culture*, Adriano Prosperi, ed., (Turin: Umberto Allemandi, 2009), 45-50, 51-55.

⁹² Downing to Clarendon, The Hague, 6 January 1661/2, Bodl. MS Clarendon 106, f. 31r. For the use of the example of Livorno, see also James Wilson, 5 October 1661, BL Sloane MS 3509, f. 11r; “A coppie of a discourse of Barbary sent his Royal highness by my Lord sandwich,” 1662, BL Sloane MS 3509, f. 25v; Hugh Cholmley, “Several discourses concerning the interest of Tangier,” BL MS Lansdowne 192, f. 12v and [Henry Sheeres], *A Discourse Touching Tanger: in a Letter to a Person of Quality* (London, 1680), 46.

⁹³ Cholmley to William Coventry, Tangier, 11 July 1670, NYRO ZCG V1/1/3, 99.

environment there that would attract foreign merchants and the trade that would follow with them.

Free ports had formed a central element of the commercial proposals advanced by merchants and the commercially minded under the Commonwealth, but they were also a departure from the conceptions of the political economy of trade that increasingly dominated English mercantile thinking in that they rested upon an open approach to trade even as England otherwise restricted and regulated its commerce along national lines.⁹⁴ Thus, although Tangier, as a port open to foreign trade, became a model for those in the American colonies who called for the repeal of the Navigation Acts, its place within England's wider colonial empire proved problematic.⁹⁵ A report on proposals to reestablish the former "composition port" at Dover from the Commissioners of the Customs pointed out that Mediterranean free ports responded to particular mercantile and political conditions that were starkly distinct from England's actual interest. The Commissioners noted that England had no need of free ports "according to such

⁹⁴ Enthusiasm for free ports initially coexisted with proposals to restrict colonial trade to English ships; however, support for free ports faded following the passage of the Navigation Act of 1651. The Act of 1660 further required that the most valuable colonial products be brought first to English ports before they could be re-exported to European markets, creating a theoretically closed system of English colonial trade, see Robert Brenner, *Merchants and Revolution: Commercial Change, Political Conflict, and London's Overseas Traders, 1550-1653* (London and New York, NY, 2003), 613-20, and Leng, "Commercial conflict and regulation," 942, 948-52. Nuala Zahedieh provides an excellent introduction to England's colonial system and its legislative foundations in, 'Economy', in *The British Atlantic world, 1500-1800*, ed. David Armitage and Michael J. Braddick, 2nd ed. (Houndmills: Palgrave Macmillan, 2009), 51-3. See also Beer, *The Old Colonial System*, especially vol. 1, chap 2, "The Laws of Trade and Imperial Defence;" Lawrence A. Harper, *The English Navigation Laws: A Seventeenth-Century Experiment in Social Engineering* (New York: Columbia University Press, 1939).

⁹⁵ "Petition of the Deputy-Governor, Council, and Assembly of Barbadoes to the King," 21 October 1670 and "The Assembly of Barbadoes to Sir Peter Colleton and ten other Gentlemen Planters in London," 20 April 1671 in *Calendar of State Papers: Colonial*, vol. 7, 1669-1674, ed. W.N. Sainsbury (London: Longman, 1889), 116, 200. For the use of free trade rhetoric among colonial opponents of the navigation laws, see Christian J. Koot, "'A Dangerous Principle': Free Trade Discourses in Barbados and the English Leeward Islands, 1650-1689", *Early American Studies* 5, no. 1 (Spring 2007):132-163.

settlements as are in Ligorine & Genoa” for whereas they belonged “to petty States that gaine Trade from one another to serve the Countries,” England already enjoyed an abundance of commodities to fuel its commerce. Consequently, while the policies of the Italian free ports aimed at attracting foreign merchants and shipping, England had no need to “decoy it hither upon other Terms his Majestie being the greatest King of Waters in Europe.”⁹⁶ In 1695, the writer Francis Brewster later echoed this opinion, arguing that the success of Livorno had given free ports an excessively positive reputation for, although creating one might be “a good Expedient” for states that “hath neither Natural or Artificial Provision for Trade and Navigation, yet it may be prejudicial to a Nation that hath both.”⁹⁷ Indeed, the original establishment of the free port at Tangier specifically excluded ships coming from English colonies and from beyond the Cape of Good Hope, maintaining the distinct separation between European and colonial trade laid down by the Navigation Laws.⁹⁸

Consequently, when reports circulated that ships were sailing directly to Tangier from the American plantations under passes from the governor of Jamaica, the Privy Council voiced its concern as to both the potential of this practice to deprive the Crown of customs revenue and the larger impact it might have on English trade.⁹⁹ In January

⁹⁶ Commissioners of the Customs, 5 February 1661, Longleat House: Henry Coventry Papers, vol. 103, f. 30r.

⁹⁷ Francis Brewster, *Essays on Trade and Navigation* (London, 1695), 29.

⁹⁸ *A Proclamation Declaring His Majesties Pleasure to Settle and Establish a Free Port at His city of Tangier in Africa*, (London, November 16, 1662).

⁹⁹ Journal entry of the Earl of Sandwich, 26 August 1668, Mapperton House, Journal of the first earl of Sandwich, vol. 8, 450, 453 and *Acts of the Privy Council of England: Colonial Series*, vol. 1, 1613-1680, ed. W.L. Grant and James Munro (Hereford: Printed for H. M. Stationery Office by Anthony Grothers, 1908), 486-487. John Finch advised Arlington of an English ship arriving at Livorno after posting a bond for its customs payments at Tangier and feared that this practice would deprive England of customs

1669, the farmers of the customs were called before the Privy Council's Committee of Trade to offer their opinion on opening trade between Tangier and the American colonies. They argued that such trade violated the Navigation Acts and in the process offered a cogent interpretation of the economic logic of England's Navigation Laws. The farmers emphasized that these laws explicitly aimed to tie the plantations more closely to England by employing English shipping, providing a vent for English manufactures and, above all, "makeing this kingdome a Staple not onely of the Comodities of those Plantations but of the Comodities of other Countries for Supplying them, it being the usage of other Nations to keep their Plantations trade to themselves." Conversely, it would be easy for any person living in Tangier "to colour the Shipps and Goods of Strangers and by that means and the easy and cheap accesse to the port as aforesaid draw the Trade from England and Englishmen."¹⁰⁰

Conversely, Tangier's mayor, the merchant John Bland, envisioned Tangier as an integrated component of England's wider commercial empire that bridged the trading worlds of the Atlantic and Mediterranean. Although Bland owned plantations in Virginia and had written in 1661 in defence of free trade for the colonies, he appears to have viewed Tangier not as a legal loophole to send colonial goods directly to Mediterranean markets, but rather as an integrated component of England's wider commercial empire

revenues, letters of 6, 10/20, and 17/27 September 1667, TNA SP 98/8. See also CO 279/10, which includes a list of 10 ships arriving at Tangier from the Plantations between June 1666 and March 1668. Colonel Henry Norwood also participated in this trade to the plantations, as illustrated in "Private instructions for W.R. [William Rumbold] to communicate when & where he shall thinke fitt," 1666, Bodl. MS Clarendon 84, f. 407r

¹⁰⁰ "Reasons against the permitting of any Goods or Merchandize of the Production of the English Plantations to be brought to Tanger before they have been first unladen in England," 19 January 1669, TNA CO 279/12. For the navigation laws as a tool to turn England into a European entrepôt, see Zahedieh, "Economy," 53.

that bridged the trading worlds of the Atlantic and Mediterranean.¹⁰¹ Bland thus argued that Tangier was “as a parte, & an oute Porte of England, Governed by the same lawes, & Councillis, suplyed with the same treasure and wholly dependant upon, and subservient to the trade, navigation, and strength, of England.”¹⁰² Customs on colonial goods could be collected at Tangier and the goods reshipped to their Mediterranean markets at lower cost, not only ensuring Tangier's success, but promoting England's dominance of trade in the Mediterranean.¹⁰³

Bland and his fellow supporters of Tangier's trade with England's plantations carried these arguments before the Council of Trade, to which the question of Tangier's participation in colonial trade had been referred by the Privy Council. They delivered a lengthy memorial to the Council that refuted the arguments of the farmers of the customs and argued that Tangier could be “bee reputed no other but a Plantation of ours” and thus permitted to trade with the other, American colonies.¹⁰⁴ The authors stated that Tangier was “a free port as well as an English Plantation” and further asked “how shall its Neighbors bee invited to bring Aught to them if they can have nothing thence to carry back,” pointing out the town could hardly succeed as a free port unless it could use

¹⁰¹ *The Humble Remonstrance of John Blande of London Merchant, on behalfe of the Inhabitants and Planters in Virgina and Mariland*, 1661 (n.p., 1661). On the use of Tangier as a loophole through the navigation laws, cf. Pagano de Divitiis, *English Merchants in Seventeenth-Century Italy*, 180.

¹⁰² John Bland, “Reason and Motives why his Majesties Cittie of Tanger should enjoy a free Trade with the other his Majesties Plantations,” Mapperton House, *Journal of the first Earl of Sandwich*, vol. 9, 358.

¹⁰³ *Ibid.*, 359

¹⁰⁴ “Reasons for the Permitting the Productions of the English Plantations in America to bee brought directly to Tanger before Landed in England submitted to consideration if valluable to what been said in contra,” BL MS Eg. 2395, f. 652r. The memorial is undated but was written in response to the petition of the Farmers of the Customs, of 19 January 1669; although unsigned, its argumentation and phrasing closely resembles Bland's memorial. Bland was in England in early 1669, further suggesting he wrote or contributed to this rebuttal of the farmers' arguments.

colonial goods to attract foreign merchants.¹⁰⁵ Moreover, the defenders of this trade responded to the customs' farmers' accusations that it would harm English trade and revenues by emphasizing its national character, since it was "a Trade att our own Nations, English with English, Plantation with Plantation."¹⁰⁶ Would trade be improved or people encouraged to settle at Tangier if "all Our English Plantations or Tanger should bee counted Aliens and forreigners?" Instead, the security of English merchants and shipping from North African corsairs depended on Tangier's maintenance and upon Tangier thus hung the fate of English commerce, "the chiefest Bulk of Our English Trade depending on the Traffick negotiated in the Mediteranian both in reference to the disposing of Our European and American goods and bringing Returnes thereof thense so usefull for our own manufactorie."¹⁰⁷ According to advocates of trade between Tangier and the American colonies, both Tangier's development and the growth of English trade in the Mediterranean thus hinged on integrating the North African colony into England's Atlantic economy.

Despite the case made by Bland and his associates, the Council of Trade "utterly rejected" their proposal to open Tangier to the plantation trade.¹⁰⁸ Officials involved in the government of Tangier continued to recommend a direct trade between the city and

¹⁰⁵ Ibid. f. 659v

¹⁰⁶ Ibid. f. 658r.

¹⁰⁷ Ibid. f. 658v.

¹⁰⁸ Journal entry of the Earl of Sandwich, 20 January 1668/9, Mapperton House, Journal of the first earl of Sandwich, vol. 9, 96. The precise chronology of these events is slightly confused. A note follows the "Reasons for the Permitting the Productions of the English Plantations in America to bee brought directly to Tanger" that records that the matter "was left to times consideration." It may be that the "Reasons" were submitted after the Council of Trade made their initial decision to prohibit trade between Tangier and the plantations. It does not appear, however, that the Council ever revisited that decision.

England's other colonies, as when Hugh Cholmley suggested in 1670 that Tangier be opened to trade with the Atlantic plantations in order to "bring a Markett hether."¹⁰⁹ In 1675, though, the Council of Trade and Plantations affirmed that within the context of the Navigation Acts, Tangier was not to be "deemed Plantation of His Majesty in Asia, Africa, or America."¹¹⁰ As a matter of economic policy, the Crown's approach to the development of Tangier did not contradict its management of colonial trade. As Roger Coke observed, "Even the Act of Navigation with reason prohibits the Trade of our Plantations to Forreigners, because thereby, though it would enrich them by how much more their Trade would become great, yet this would be so much to the loss of the Nation: and permits a free Trade to *Tangier*, because it may enrich the place, and make it more frequented."¹¹¹

The legal separation of Tangier from England's Atlantic Empire reflected different approaches to the organization of trade that divided the trading world of the Mediterranean from the increasingly exclusive zones of colonial trade in the Atlantic Ocean. The effect of this separation was not only to deprive Tangier of its predicted role as a nexus of global trade but also to accentuate a process whereby legal and commercial regulations defined the oceanic boundaries that marked England's imperial development. The division of Tangier from England's wider trading empire thus reflects the rise of the

¹⁰⁹ Cholmley to William Coventry, Tangier, 2 October 1670, NYRO ZCG V 1/1/3, 156 and Cholmley, "Several discourses concerning the interest of Tangier," BL MS Lansdowne 192, f. 97r.

¹¹⁰ This clarification comes in a summary of the Navigation Acts that follows an "Answer of the Commissioners of the Customs about the Act of Trade & Navigation" to Lord Danby, 12 May 1675, London, TNA CO 324/3, f. 13v. Cf. José Ingacio Martínez Ruiz, "De Tánger a Gibraltar: el estrecho en la praxis comercial e imperial británica (1661-1776)," *Hispania* 221 (2005), 1049-1050.

¹¹¹ Roger Coke, *England's Improvements* (London, 1675), 113.

“ocean regionalism” that has recently been dated to the end of the seventeenth century. At that time, the different ways in which the English state and East India Company responded to a global upsurge of piracy established their jurisdictional authority respectively in the Atlantic and Indian Oceans and thus contributed to the emergence of distinct legal regimes in those seas.¹¹² The case of Tangier revealed how different trading regimes equally separated the Mediterranean and Atlantic. The free ports and open trade policies of Mediterranean states contrasted markedly with the restrictions that European empires placed on the trade of their colonies. The exclusion of Tangier from trade with England's wider empire illustrated how commercial legislation ultimately divided English commerce into Mediterranean and Atlantic spheres.

III. *Tangier and the Moroccan Empire*

Although Tangier's status as a free port marginalized it within England's burgeoning commercial empire, the colony's political and strategic situation nevertheless closely resembled that of other English fortresses and ports around both the Atlantic and Indian Oceans. With the declining power of the Saadi dynasty of Morocco from the early seventeenth century, Tangier's English garrison and inhabitants encountered a fluid political environment. The colony's promoters and governors well understood that its success depended on managing an array of competing dynasties and warlords to expand England's commercial and maritime foothold. Yet, even as English governors and company factors took advantage of emerging fractures in Asian, American and African

¹¹² Lauren Benton, “Legal Spaces of Empire: Piracy and the Origins of Ocean Regionalism,” *Comparative Studies in Society and History* 47, no. 4 (2005): 700-724; eadem., *A Search for Sovereignty: Law and Geography in European Empires, 1400-1900* (Cambridge: Cambridge University Press, 2010), 137-148.

polities to establish and legitimize fortified ports, a different process dominated in Morocco. Company factors in Asia and along the African coast navigated a world of “composite sovereignties,” legitimating their forts, strongholds and fledgling empires through both European and extra-European sources.¹¹³ Yet in the face of Moroccan expansion, Charles II lacked both the Parliamentary support necessary to preserve the city and the political flexibility to hold the city on Moroccan terms.

The rise of the new and assertive Alawi dynasty under Moulay al-Rashid and his successor, Moulay Ismaïl, fundamentally altered Tangier's position within Morocco. For these Moroccan empire-builders, holy war directed against Tangier and other Christian settlements on the North African coast legitimized their rule and helped them to unite the tribal groups that threatened their efforts to centralize a growing empire.¹¹⁴ In 1673, the Earl of Middleton prophetically warned, “if once the Country should be reduced under as absolute monarchy as Taffaletta [Moulay al-Rashid] was in prospect and pursuite of, I am afraid this part of Barbary might prove very troublesome to other places of Christendome as well as to Tanger.”¹¹⁵ The lengthy siege of Tangier by the forces of Moulay Ismaïl in 1680 demonstrated the new and serious threat posed to Tangier by Moroccan forces. Though Tangier was relieved and the siege lifted, the attacks revealed the vulnerability of the city before the weight of Moulay Ismaïl's growing threat.

¹¹³ See Philip J. Stern, “‘A politie of civill & military power’,” 253-283. For a description of the English relationship with Africans and African polities, see Robin Law, “‘Here is No Resisting the Country’: The Realities of Power in Afro-European Relations on the West African ‘Slave Coast’,” *Itinerario* 18, no. 2 (1994): 50-64; P.E.H. Hair and Robin Law, ‘The English in Western Africa to 1700’, in *The Oxford history of the British Empire*, vol. 1, *The Origins of Empire*, ed. Nicholas Canny (Oxford: Oxford University Press 1998), 260-262.

¹¹⁴ See Johan de Bakker, *Slaves, Arms and Holy War*, passim.

¹¹⁵ Earl of Middleton to the Lords Commissioners for Tangier, 5 February 1673, Tangier, TNA CO 279/16, f. 289v.

Tangier was thus a site of empire-building for both the Alawi and Stuart dynasties. The colonization of Tangier exemplified the restored monarchy's commitment to take a leading role in England's commercial and colonial development. Underlying this commitment, though, was the Restoration regime's aim to channel England's overseas expansion to solidify its own reputation and prestige. Giovanni Luca Durazzo, Genoa's ambassador to the newly restored monarchy, noted in 1662 that Charles II's passion for prestige, born of his exile in foreign courts, was further inflamed by the need to reestablish the English monarchy in the eyes of its subjects and to show them that “the Legitimate government [is] no less glorious than the Popular and tyrannical.”¹¹⁶ Tangier's close relationship to the Crown testified to both the overseas expansion of the English state and to the insecurity of the Restoration monarchy in the face of domestic opposition. In his defense of Charles II's new acquisitions, James Howell had specifically lauded the benefits of a garrison at Dunkirk as “a curb to the malcontents, and Factious spiritts” still present in England.¹¹⁷ Tellingly, when Tangier's merchants suggested to the Earl of Sandwich in 1668 that they would be more confident to invest in the city if it were annexed to the Crown, and thus not as easily sold as Dunkirk had been, Sandwich thought this, “A greate point of state, How farr it is good in order to Preserve the Crown upon the Head of my Master & his family to part with Regalities; & whether emergencies

¹¹⁶ “...per far apparire à Popoli il governor Legitimo non men glorioso del Popolare, e tirannico,” “Relazione Dell’Ambasciata Straordinaria in Inghilterra al Rè Gran Bretagna Carlo Secondo,” January 1662, ASG Archivio Segreto, Relazioni dei Ministri 1/2717, 347.

¹¹⁷ Howell, “A short Discours,” TNA SP 29/52, f. 265r. More generally, see Harris, *Restoration*, pp. 49-50.

may not happen wherein it may be of great use to his Majestie to have such a place in his owne personall power.”¹¹⁸

In itself, the constitutional status of Tangier as described by Sandwich was not unique; Sir Matthew Hale noted that overseas possessions could be acquired by the king either in the “capacity of king of England...or Charles Stewart.”¹¹⁹ A bill passed by the House of Commons in 1661 to unite Dunkirk and Jamaica to “the imperial crown of this realm” died in the House of Lords since the formal annexation of the two Cromwellian conquests would have provoked the hostility of a Spanish government to which Charles II had promised the return of the colonies.¹²⁰ A similar effort was made in 1679 to annex Tangier to the English Crown in order to ensure that the city was not sold to France. However, although colonial governance in general stemmed from royal prerogative, the large garrison at Tangier and the city's Catholic population made it uniquely vulnerable to domestic opposition.

In the midst of the political crisis that grew up around the Popish Plot and Exclusion Bill, Tangier's expense and close association with the Crown focused Parliamentary suspicions on the city as an apparent foundation for future Catholic

¹¹⁸ Journal entry of the Earl of Sandwich, 4 September 1668, Mapperton House, Journal of the first earl of Sandwich, vol. 8, p. 532. The anonymous Spanish advocate of Tangier also observed that Tangier was a personal possession of the king, “non vinculada a la corona y los successores en ella, antes libre y dependiente de su real disposición y mando,” de la Véronne, ed., *Tanger sous l'occupation anglaise*, 72.

¹¹⁹ Matthew Hale, *The Prerogatives of the King*, ed. D.E.C. Yale (London: Selden Society, 1976), 43, n. 1.

¹²⁰ Leo Francis Stock, ed., *Proceedings and Debates of the British Parliaments respecting North America*, vol. 1, 1542-1688 (Washington, DC: Carnegie Institution of Washington, 1924), 278, 281, 283-285, 288. Ian K. Steele, “The British Parliament and the Atlantic Colonies to 1760: New Approaches to Enduring Questions,” *Parliamentary history* 14, no. 1 (1995), 38, n. 44.

absolutism.¹²¹ Although he still held Tangier to be a “Jewell of such inestimable value,” John Bland warned the Earl of Shaftesbury in 1680 that Catholics dominated the garrison and the civilian government and that both the foreign residents and Irish soldiers were of dubious loyalty.¹²² The inclusive and tolerant environment that integrated Tangier into the commercial and social patterns of the Mediterranean world also rendered it politically controversial within a Protestant empire. Tangier contained a garrison that comprised a large number of Catholic soldiers and officers, which seemed at best superfluous in a time of apparent national crisis and at worst appeared to be a threat to English and Protestant liberties.¹²³ When Parliament refused to allocate additional funds for Tangier in the aftermath of the siege of 1680, unless Charles II excluded the Duke of York from the succession, the city's abandonment became all but inevitable. Unable to afford the defense of Tangier in the face of the possibility of future Moroccan assaults upon the city, Charles II could only evacuate and destroy it.

If the acquisition of Tangier pointed to the grand imperial ambitions held by the later Stuart monarchs, the colony's failure highlighted the relative weakness of the seventeenth-century English state. As the Restoration monarchy poured money into the development of Tangier's harbor and fortifications, it anticipated the authoritarian empire of the later eighteenth century but also engaged in an endeavor that far exceeded the Crown's actual capacity to project its power overseas. Although Charles II and his

¹²¹ For a discussion of the place of Tangier in English politics at this time, see Mary K. Geiter, “The Restoration Crisis and the Launching of Pennsylvania, 1679-81,” *The English Historical Review* 112, no. 446 (April 1997): 300-318.

¹²² John Bland to Shaftesbury, Tangier, 1680, BL Sloane MS 3512, f. 283r-v.

¹²³ *Debates of the House of Commons, From the Year 1667 to the Year 1694*, ed. Anchitell Grey (London, 1763), 8: 4-21.

ministers did not intend Tangier to be a mere garrison, the city was never even remotely self-sustaining and left the state to bear the full burden of its costly defense. As early as 1666, during the financial crisis precipitated by the Dutch raid on the Medway, Hugh Cholmley warned Tangier's lieutenant governor, Henry Norwood, that sentiment was turning against the city in favor of retrenchments necessary “to preserve our Antient Dominions in a flourishing Condition then by Exhausting[sic] our Treasure to impoverish our Selves in hopes to make our Posterity more glorious by a Remote accession to the Crowne.” For Tangier's skeptics, projects like the transformation of this exposed site into a naval and trading center were works “rather of noise and reputation then any solid benefitt & therefore sutable to plentiful & larger monarchys,” not those struggling to reduce their expenses.¹²⁴

Weakness alone cannot account for Tangier's failure: the East India Company found itself badly mauled after it launched its war against the Mughal Empire in 1686 and, seventy years later, it was the capture of Fort William by the forces of Nawab Siraj ud-Daulah that precipitated the Company's conquest of Bengal.¹²⁵ Moreover, an impetus to reconquer European footholds on the African coast was not the only factor that shaped Moroccan relations with Tangier. For both the local rulers that the English first encountered upon occupying Tangier and the centralizing emperors of the Alawi dynasty,

¹²⁴ Cholmley to Norwood, London, 2 September and 1 November 1667, NYRO ZCG V1/1/2, 70, 111-112.

¹²⁵ P.J. Marshall, “Western Arms in Maritime Asia in the Early Phases of Expansion,” *Modern Asian Studies* 14, no. 1 (1980): 13-28; Om Prakash, *European Commercial Enterprise in Pre-Colonial India* (Cambridge: Cambridge University Press, 1998), 146-153; Colley, *Captives*, 38, 255-256; Sanjay Subrahmanyam, *Explorations in Connected History: Mughals and Franks* (New Delhi: Oxford University Press, 2005), 203. On the place of violence and the threat of force in European relations with the wider world in the early modern period, see especially Sanjay Subrahmanyam, *The Political Economy of Commerce: Southern India, 1500-1650* (Cambridge: Cambridge University Press, 1989), chap. 5, “Europeans and Asians in an Age of Contained Conflict,” *passim*.

the English colony and the remaining Spanish possessions on the Moroccan coast were equally valuable as targets for regime legitimizing jihad and as sources of the gunpowder and arms upon which their state-building depended.¹²⁶ The later correspondence from Tangier's governors testifies to their appreciation of Tangier's weakness in the face of Moulay Ismaïl's empire building. Colonel Percy Kirke well understood that the city's peace depended on its value to Moulay Ismaïl as a source for the arms and powder his armies needed: "the point of the Contraband is that which makes the Moors sett the highest value on our frendship."¹²⁷ This complicated relationship belies Nabil Matar's conclusion that by 1680 England's "encounter with the Moors had become completely grounded in colonial desire and religious difference."¹²⁸ In the fractured political environment of Morocco in the mid-seventeenth century, these two dimensions of Muslim-Christian relations were intertwined and had even encouraged an element of interdependence between Tangier and its sometime enemies.

A letter that Moulay Ismaïl sent to Charles II in 1682 explained why peace depended upon the supply of arms he expected to receive from the English and emphasized the changed political circumstances that at once weakened Tangier and encouraged him to complete its conquest:

for the Moors have no words or thoughts but the reducing of Tanger and I cannot stop their mouths but by telling them that Tanger is our work-house and that wee receive from them whatever wee please of arms, powder and Ammunition and that it is many hundred years that it hath belonged to the Christians. In former times their neighbours were Rebels whose Government was not above a day or two's journey in extent and had no power or concerned themselves for any thing

¹²⁶ For this point, see Bakker, *Slaves, Arms, and Holy War*, 4-9.

¹²⁷ Kirk, Tangier, 26 January 1681/2, TNA CO 279/29, f. 45r.

¹²⁸ Matar, *Britain and Barbary, 1589-1689*, 158.

but their own persons and profit. Now that God hath exalted the King in Algarve whose Territories do extend to four or six months journey, people would desire him if he should leave any of the Christian Garrisons in his neighbour hood or connive at Tanger Ceuta or Larache by suffering them to remain which would be a great dishonour.¹²⁹

Willing though he was to maintain and even extend the existing peace so long as he received the “gifts and acknowledgements due for its security” and that would “give us an occasion of stopping the mouths of the Moors,” Moulay Ismaïl also threatened to attack the city if the English did “any damage either by sea or land or so much as to have moved a stone that ought not to be.”¹³⁰ This letter clearly describes the ideological and political situation that faced Tangier following the rise of the Alawi empire. It also manifests a fundamental, if striking, tension between the importance of the arms and powder he obtained from Tangier and the political motives that instead encouraged him to seek the city's conquest.

The relationship between Tangier and its Moroccan neighbors parallels the vulnerability and mutual dependence that defined European fort and factories along the African coast and around the Indian Ocean. Ideological factors help to explain the divergent histories of Tangier and of the outposts that would become foundations of the British Empire. In 1698, the English travel writer John Fryer described the brief French occupation of the eastern Indian city of São Tomé between 1672 and 1674. In the course of his account of the city, Fryer posed the question, “Why *Gulconda*, being a Potent

¹²⁹ “Translation of the Emperor of Morocco's Letter to the King,” TNA CO 279/30, f. 340r-v.

¹³⁰ Ibid., f. 341v.

Prince, should permit Garisons to be in the hands of Aliens'? ¹³¹ Fryer's explanation that South Asian princes were "weak at sea" and thus preferred to allow foreign allies to bear the cost of defending port-cities belies the commercial and even maritime interests of those rulers. ¹³² However, Fryer's question remains pertinent, especially considering the fate of Tangier. Tribute payments and custom revenues encouraged African and Asian polities to permit European forts and factories to be situated upon their lands. More broadly, though, these outposts also testified to the willingness and ability of companies to accept the sovereign authority of African and Asian rulers in order to develop their own political and commercial foundations. Although the construction of fortifications reflected a widespread belief that the safety of European communities depended on the threat of force, European strongholds generally rested on grants bestowed upon their founders by neighboring rulers and were often sustained through judicious acknowledgment of indigenous suzerainty. ¹³³

Parliamentary demands over the funding of Tangier threatened the royal prerogative of the Crown; in a similar way, questions of English sovereignty over Tangier and how far possession of that city extended bedeviled the garrison's relations with its Moroccan neighbors. In 1662, after his negotiations for a six month peace with

¹³¹ John Fryer, *A New Account of East India and Persia* (London, 1698), 43, quoted in Henry Davison Love, *Vestiges of Old Madras, 1640-1800; traced from the East India Company's Records Preserved at Fort St. George and the India Office, and from other sources* (London: J. Murray, 1913) 1: 318.

¹³² For the relationship between south Asian state-building and political economy in this period, see Sanjay Subrahmanyam, *Penumbra Visions: Making Polities in Early Modern South India* (Ann Arbor: University of Michigan Press, 2001), 104-114, 131-136; idem., *Explorations in Connected History: From the Tagus to the Ganges* (New Delhi, 2005), chap. 3, "Persianization and 'Mercantilism' in Bay of Bengal History, 1400-1700."

¹³³ Watson, "Fortifications and the 'Idea' of Force," passim; Stern, "'A Politie of Civill & Military Power,'" 254-267.

neighboring ruler al-Khadir Ghaylan failed, the Earl of Peterborough complained that only “a greate feare, or an exceeding Interest” would bring the Moroccans into good relations with “any Strainger, espesially to a Christian, Jealous they are, beyond all measure of there Land.”¹³⁴ Peterborough's successor, the Earl of Teviot, lost his life in 1664 in the war that followed his decision to resume building fortifications outside the walls of Tangier, the Moroccans having refused to maintain a truce “because theyr Law would not permitt them to giv libertie to Cristians to fortifye in Africa.”¹³⁵ Fifteen years later, in 1680, Tangier's governor Colonel Edward Sackville warned the commissioners for Tangier that any effort to fortify ground outside Tangier without the permission of Moulay Ismaïl would only “begett a Religious warr” and bring down the whole power of his empire upon Tangier.¹³⁶ A letter of 1684 from Moulay Ismaïl to Charles II following the English evacuation of Tangier is eloquent testimony of the ideological and political pressures that acted on both the Moroccan and English empires. The sultan wrote that now that the English no longer occupied Tangier, he looked forward to better relations with them in the future, since “you have lightened our shame and left the land of the Muslims.” Such a peace had been impossible previously for he could not:

make a treaty with you over Muslim land while you are occupying it by force. The Turks would revile me for that if I did it and deride me because of it, for the Turks, if they make peace with the Christian, do not do so until they have them under a treaty of *dhimma*, not like you, who had your watchtowers and cannon

¹³⁴ Earl of Peterborough, Tangier, 2 April 1662, TNA CO 279/1, f. 128r.

¹³⁵ Earl of Teviot, Tangier, 18 March 1664, TNA CO 279/3, f. 33v.

¹³⁶ Colonel Sackville to Lords of the Committee for Tangier, Tangier, 1 January 1680, TNA CO 279/27, f. 2v.

while desiring that I should make peace with you. God will not consent to our doing that.¹³⁷

The author of a later defense of Gibraltar hinted at a similar understanding of the limits of the English claim to Tangier in Moroccan eyes when he noted in 1720, “we had not the same Right to *Tangier* that we have to *Gibraltar*; to That we had no other than what the Crown of *Portugal* gave us, which was that of Conquest; to This we have the Right of Conquest and of Cession too.”¹³⁸

Questions of sovereignty over Tangier stood at the center of Morocco's relations with that English garrison. In 1683, the former Moroccan ambassador to England, Muhammad ben Haddu, wrote to Charles II to warn him that Moulay Ismaïl had used the promise of holy war to unite those tribal groups that had originally resisted his rule and was preparing to attack Tangier.¹³⁹ The Moroccan diplomat recounted an exchange between Moulay Ismaïl and the Ottoman sultan over disputed territory between Morocco and Algeria. According to Muhammad ben Haddu, the Ottoman sultan responded to Moulay Ismaïl's initial letter regarding this territory by promising that the people of the land in question would serve the Moroccan emperor whenever he again engaged in war against the Christians, but also asking how the Moroccans could “have patience and

¹³⁷ Letter from (Ismail) to Charles II, 6 (Rabi the First 1095), 26 February 1684 in J. F. P. Hopkins, ed. *Letters from Barbary, 1576-1774: Arabic Documents in the Public Record Office* (Oxford: Oxford University Press, 1982), 31. The original reference is TNA: SP 102/2 #128.

¹³⁸ Britannus, *A letter to the Independent Whig, Occasioned by his Consideration of the Importance of Gibraltar to the British Empire* (London, 1720), 19-20.

¹³⁹ Moulay Ismaïl dispatched Muhammad ben Haddu in 1682 to London as his ambassador to Charles II. The Moroccan emperor refused to ratify the draft treaty he had negotiated in England, though after a period in disfavor, Muhammad ben Haddu continued as a go-between with the English, as testified by this letter. For the context of this letter, see Bakker, *Slaves, Arms, and Holy War*, 7-9 and 72-85.

endure in your countries four Christian Garrisons.”¹⁴⁰ Warning again of the coming assault on Tangier, ben Haddu proceeded to suggest how the English might avoid war and the expense it would entail. Ben Haddu advised Charles “to open your hands with gifts and to have pity on the city of Tanger” and to “make it a Jewry (*mallah*) and storehouse for whatsoever my Master shall demand of powder and armes and whatsoever else he shall want and ask from your parts and do you write to him and beg of him his grace and Peace.” He went on to reiterate his suggestion that the English turn over Tangier, explaining that this would allow Moulay Ismaïl to justify the English presence in the city:

Do you therefore with all diligence behave your self well in my Masters service and give him whatever he demands of powder and armes and all other things to the end that he may have some excuse to make to the Ottoman Emperour that he does not make war on Tanger and may write him in the Letter that he now intends to send him that he keeps it as a place in obedience to him and that payes him taxes and customes and supplies him with whatsoever he commands.¹⁴¹

Significantly, ben Haddu specifically called on Tangier’s residents to pay the *jizya*, or poll tax, which would have signified their incorporation into the Moroccan empire as non-Muslim subjects.¹⁴² Thus, according to ben Haddu, while the Moroccans would no

¹⁴⁰ Ben Haddu here refers to the cities on the North African coast that remained under Spanish and Portuguese control.

¹⁴¹ The translation here used is the original contained in TNA CO 279/30, f. 353r-356v. Kirke noted the difficulties his translators had in rendering this letter into English, “though they are not skillfull enough to give the exact meaning of every phrase yet they have bene able to collect the substance of the whole,” Kirke to Jenkins, Tangier, 9 August 1683, TNA CO 279/32, f. 74r. The letter nonetheless largely parallels the modern translation by Hopkins in *Letters from Barbary*, 23-30, which is derived from the original Arabic letter in TNA SP 104/4, #110. Hopkins provides the letter’s date of 11 Sha’ban 1094, or 5 August 1683. The translation in CO 279/30 is incorrectly dated to 1682. Hopkins also gives the original Arabic term for “jewry” as *mallah*, which referred to the Jewish quarters of Moroccan cities.

¹⁴² Hopkins specifies that ben Haddu cited the *jizya*, or poll-tax, when he referred to Tangier paying taxes to Moulay Ismaïl, *Letters from Barbary*, 28. For background on the significance of this tax within Islamic law and its relationship to subject status, see Edhem Eldem, “Capitulations and Western Trade,” in *The*

longer tolerate an independent garrison at Tangier, the English could remain there on condition that they acknowledged Moroccan sovereignty over the city.

While Muhammad ben Haddu's letter at least claimed to offer the English a way to maintain Tangier under the auspices of Moulay Ismaïl, the response of the city's governor, Colonel Percy Kirke, echoed those concerns for the Crown's authority and reputation that were central both to prospects for the development of Tangier and to Charles II's refusal to fund the city at the cost of his brother's succession.¹⁴³ Kirke reported to the Secretary of State, Leoline Jenkins, that while he had expected to have found "some small and harmlesse artifice" in the letter, he was instead "amazed to find the highest peice of impudence that could have been imagined."¹⁴⁴ Meanwhile, Kirke replied to Muhammad ben Haddu to express, "how much I have been surprised at so disrespectfull a manner of address to so great a Prince, and from whom you own to have received such heaps of favours," and then continued, "when I hear you advise my Master to make Tanger a tributary place and submit it as a Jewry to the Moors, I cannot consider you but as one of his greatest enemies or that some persons who wish you ill have made use of your name to affront my Master and ruine your credit with him."¹⁴⁵

Cambridge History of Turkey, vol. 3, *The Later Ottoman Empire, 1603-1839*, ed. Suraiya N. Faroqi (Cambridge: Cambridge University Press, 2008), 293-4.

¹⁴³ For the ideological basis of opposition to the exclusion bills and to Parliamentary intrusion on royal authority, see Tim Harris, *Restoration: Charles II and his Kingdoms, 1660-1685* (London: Allen Lane, 2005), 220-237, 252-258. See also, Jonathan Scott, *England's Troubles: Seventeenth-Century English Political Instability in European Context* (Cambridge: Cambridge University Press, 2000), 435-436.

¹⁴⁴ Kirke to Jenkins, Tangier, 9 August 1683, TNA CO 279/32, f. 74v.

¹⁴⁵ "Copie of Colonel Kirke's second Letter to the Morocco Ambassador," Tangier, 9 August 1683, TNA CO 279/32, f. 72r.

Ultimately, Moulay Ismaïl was as unwilling to tolerate a fortified English settlement on his coast as Tangier's governors were to countenance its submission to Moroccan supremacy. As Muhammad ben Haddu's letter suggests, Christian settlements along the North African coast were particularly vulnerable within the culture and political tradition of religious war that had defined the Mediterranean for centuries. The particular ideological context that made jihad central to the creation of Moulay Ismaïl's empire differed from that which prevailed in South Asia, where state building tended to be religiously and culturally syncretic.¹⁴⁶ However, ben Haddu's suggestion that the English could remain at Tangier if they would only acknowledge Moroccan sovereignty over the city also indicates that the political situation of Tangier was comparable to that of English outposts in India. Kirke's steadfast refusal to consider a proposal that he saw as demeaning to the honor of the English Crown is thus all the more striking when we consider that the East India Company was simultaneously building its legitimacy in the political economy of the Indian Ocean through the grants awarded it by Mughal emperors and other Asian sovereigns.¹⁴⁷ The politics of England's relations with Morocco thus offer a striking contrast to those which marked European interaction with local rulers around the Indian Ocean or on the west African coast. Crown sovereignty over Tangier deprived its governors of the political flexibility that East India Company factors

¹⁴⁶ C.A. Bayly, *Origins of Nationality in South Asia: Patriotism and Ethical Government in the Making of Modern India* (New Delhi: Oxford University Press, 1998), 37-49, 214-219.

¹⁴⁷ Stern, "A Politie of Civill & Military Power'," 264-267. A later comparison of the issues involved might be found in the very different outcomes achieved by the MacCartney mission to China and contemporaneous embassies from the VOC. Freed from the sovereign concerns that surrounded state diplomacy, the VOC's envoys enjoyed far greater freedom of action and negotiation, cf. Leonard Blussé, *Visible Cities: Canton, Nagasaki, and Batavia and the Coming of the Americans* (Cambridge, MA: Harvard University Press, 2008).

skillfully deployed to expand company power and authority under the aegis of the Mughal Empire and other Asian polities.

IV. Conclusion

At a time when European military power still wielded limited influence on powerful Asian and African polities, the ideological framework that guided relations between England and Morocco over Tangier provided one of the most subtle but critical distinctions between the histories of that colony and Bombay. The conceptions of political economy and Crown authority that underlay the colonization of Tangier contributed to the wider process whereby even as the Atlantic and Indian Oceans and Mediterranean became more intertwined, the political and commercial organization of these seas also diverged. Charles II's massive investment in Tangier testifies to perceptions of the centrality of the Mediterranean for the development of the English empire. However, if Tangier could appear to be an integral part of an English empire based upon naval and commercial dominance, it also represents a unique aspect of England's overseas expansion, responding to the political economy of the Mediterranean and resting upon an approach to trade that starkly differentiated it from England's Atlantic Empire.

The abandonment of Tangier by no means suggested that the Mediterranean occupied a less significant place in English commercial, strategic or even imperial thinking. Though the Crown abandoned Tangier after it was no longer able to maintain the hard-pressed city without Parliamentary support, Tangier had already proved to be neither

adequate nor necessary for English naval operations in the Mediterranean.¹⁴⁸ While designed to offer English ships a secure place to refit, Tangier proved less convenient than other Mediterranean ports and did little to support or extend the reach of the English navy into the Mediterranean. The failure of Tangier, though, did not eliminate the conviction that England needed a port in the Mediterranean. Indeed, the decision to destroy Tangier stemmed in part from fears that the French or Moroccans might succeed where Charles II had failed, to the detriment of English trade.¹⁴⁹ The Tuscan resident in London, Franco Terriesi, reported hearing rumors from the opponents of the city's evacuation that the English would “go on to take possession of some other place more proper for them, and of less expense, and these persuade themselves, that it is of too much consequence for them, to have a port in those parts, to wish to be totally excluded from them.”¹⁵⁰ Henry Rumbold, who denigrated the value of the North African city, thought Gibraltar would be “worth ten Tangers.”¹⁵¹

After the conquests of Gibraltar and Minorca during the War of the Spanish Succession, officials and pamphleteers argued for their importance in terms that echoed earlier defenses of Tangier. Both of these new colonies inspired visions of commercial

¹⁴⁸ Sari Hornstein, *The Restoration Navy*, pp. 205-208.

¹⁴⁹ See the comments of William Temple advocating the destruction of Tangier in *Debates of the House of Commons*, 8:19; Dartmouth's letter to the mayor, aldermen, corporation and inhabitants of Tangier, 4 October 1683, TNA CO 279/32, f. 185v; Carlo Ottone's reports to the Genoese senate of 6/16 August, 13/23 August, and 20/30 August 1683, ASG Archivio Segreto, Lettere Consoli 1/2630, mazzo 3.

¹⁵⁰ “E trá le diverse oppinioni, che si odano intorno a quest'impresa, dicano alcuni, che siano in seguito L'Inglesi, per andarsi ad'impadronire di qual che altro posto per essi piú proprio, e di minore dispendio, e sono quelli che parlano cosi che si persuadano, che sia troppa per essi La conseguenza, d'havere un porto in quelle parti, per volersene totalmente escludere,” Terriesi to Panciatichi, London, 13/23 August 1683, ASF Mediceo del Principato, 4212.

¹⁵¹ [Henry Rumbold], undated, Bodl. MS Carte 69, f. 388r.

and maritime empire that paralleled those that had surrounded Tangier.¹⁵² James Stanhope, who led the British forces that seized Minorca in 1708, thought the island could become an entrepôt to rival Livorno.¹⁵³ In 1725, a pamphlet similarly echoed the imperial vision that encompassed Tangier when it declared that Gibraltar was “a Key to the *Mediterranean*, and entitles us to the Sovereignty of that Sea.”¹⁵⁴ Tangier also served as a model for the administration of Gibraltar. In 1728, the Board of Trade presented the Privy Council with plans for instituting a civil government in Gibraltar. The members of the Board explained that they had examined the plans of government for Barbados and the Leeward Islands, but thought Tangier to be the most appropriate model since it too had been “a Single Town, without any Considerable Territory” and thus “best Adapted to the Circumstances of Gibraltar.” Nevertheless, the Board’s recommendations for a civic government at Gibraltar differed in crucial respects from the charter that incorporated the town of Tangier in 1668. Significantly, the Board proposed that “the Freedom of this City should be Confined to Protestant Inhabitants only,” whereas Catholics had been allowed to participate in Tangier’s town government.¹⁵⁵ Charles II and his ministers had opened

¹⁵² In 1718, the Colonel Richard Kane, the lieutenant governor of Minorca, made a report of his recommendations for the development of the island and noted that Port Mahon had been made a free port in order to attract merchants and make it “a Magazine from whence they might disperse their Goods to all parts about the Mediterranean,” see “Freedom of the Ports, Commerce & Quarantine in the Island of Minorca to be taken under Consideration,” 22 July 1718, TNA CO 388/20. For expectations of Minorca’s commercial potential and their disappointment, see Desmond Gregory, *Minorca, the Illusory Prize: A History of the British Occupations of Minorca between 1708 and 1802* (Rutherford, NJ: Fairleigh Dickinson University Press, 1990), 25-27, 140, 156-167.

¹⁵³ Sunderland to Stanhope, Whitehall, 10 December 1708, BL Add. MS 61651, f. 141v; Gregory, *Minorca, the Illusory Prize*, 26-28.

¹⁵⁴ A Gentleman of the Navy, *Gibraltar a Bulwark of Great Britain* (London, 1725). For a similar sentiment, see John Beaver, *A Letter to the Lords Commissioners for Trade and Plantations, Concerning the Advantage of Gibraltar to the Trade of Great-Britain* (London, 1720), p. 5.

¹⁵⁵ Board of Trade to the Privy Council, Whitehall, 16 December 1728, TNA PC 1/4/94.

Tangier's trade and government to foreign participation in an effort to promote the city's development within the religiously and culturally diverse environment of the Mediterranean. Such civic tolerance was out of place, however, within the self-consciously Protestant British Empire of the early eighteenth century.¹⁵⁶

The eventual abandonment of plans to create a civil government in Gibraltar highlighted the fact that it and Minorca were garrison colonies that never developed into significant commercial centers.¹⁵⁷ Despite optimism for their mercantile potential, these colonies functioned chiefly as military and naval bases to sustain Britain's influence over the balance of power in southern Europe.¹⁵⁸ A year after the Treaty of Utrecht of 1713 confirmed England's hold on Minorca and Gibraltar, one pamphlet dismissed the suggestion that these possessions were beneficial to English trade, "the Consequences and Advantages arising from them are only in Case of War with *France, Spain* and other Nations, a very precarious Security to our Trade into the *Levant* and *Mediterranean*."¹⁵⁹ Popular support for these colonies continued to run high, as illustrated by pamphleteer Thomas Gordon when he claimed in 1720 that Gibraltar was "the most important Place in the World to the Trade and Naval Empire of *England*."¹⁶⁰ Yet Gordon's praise for

¹⁵⁶ Owen Stanwood, *The Empire Reformed: English America in the Age of the Glorious Revolution* (Philadelphia: University of Pennsylvania Press, 2011).

¹⁵⁷ On the military administration of Tangier and Minorca, see Geoffrey Plank, *Rebellion and Savagery: The Jacobite Rising of 1745 and the British Empire* (Philadelphia: University of Pennsylvania Press, 2006), chap. 5, "Cumberland's Army in the Mediterranean."

¹⁵⁸ Colley, *Captives*, 69-72.

¹⁵⁹ [William Wood], *The Assiento Contract Considered, as also the Advantages and Decay of the Trade of Jamaica and the Plantations, with the Causes and Consequences Thereof* (London, 1714), 29.

¹⁶⁰ [Thomas Gordon], *Considerations Offered upon the Approaching Peace and upon the Importance of Gibraltar to the British Empire, being the Second Part of the Independent Whig* (London, 1720), p. 28,

Gibraltar testified as much to the multiplicity of ideas of English empire in the early eighteenth century as to enduring perceptions of the importance of the Mediterranean for that empire. Whereas James Howell had imagined Tangier to be one of a global network of Crown possessions, neither Gibraltar nor Minorca factored into emerging conceptions of a transatlantic British Empire. Only in the aftermath of the Seven Years War did global conceptions of the British Empire emerge that unified all British possessions, including those in the Mediterranean, into a single imperial vision.¹⁶¹

With the occupation of Tangier, the Crown aimed to establish its dominance over the Strait of Gibraltar and to develop a trading port that would link the economies of the Atlantic and Mediterranean. The subsequent occupation of Gibraltar and Minorca illustrated the extent to which English dominance of the Mediterranean continued to exercise a strong influence on state policy and popular opinion. However, the history of these colonies also highlighted the limited expansion of the early modern English and then British Empire into the Mediterranean. From the later half of the seventeenth century onwards, the English expanded their initial footholds in North American and the Caribbean and fortified trading sites along the Indian Ocean. In the Mediterranean, on the other hand, the English failed to establish a viable trading center of their own. Although commentators and officials dreamed of establishing English dominance over the Strait of

quoted in Marie Peters, "Early Hanoverian Consciousness: Empire or Europe," *English Historical Review* 122, no. 497 (June 2007): 651.

¹⁶¹ John Entick, *The Present State of the British Empire* (London, 1775), 1: 4; John Cartwright, *American Independence the Interest and Glory of Great-Britain*, 2nd ed. (London, 1775), 23 quoted in David Armitage, "The British Conception of Empire in the Eighteenth Century," in *Imperium/Empire/Reich: Ein Konzept politischer Herrschaft im deutsch-britischen Vergleich*, ed. Franz Bosbach and Hermann Hiery (Munich: Saur, 1999), 104. On the rise of global conceptions of the British Empire, see H.V. Bowen, "British Conceptions of Global Empire, 1756-1783," *Journal of Imperial and Commonwealth History*, 26, no. 3 (September 1998): 1-27.

Gibraltar, English claims to maritime and territorial sovereignty in the early modern Mediterranean remained extremely limited. As a result, England became a Mediterranean power without a Mediterranean empire. Instead, it was the relationship of English state authority with that of Mediterranean states that shaped the legal and political frameworks within which the English presence in the sea developed.

Chapter 2

Factories and Consuls in the Western Mediterranean, 1660-1713

...the englishmen [at Livorno] want to rule, and to be independent: their body immediately turns any small private and individual business of a British subject into a nation or state business involving their Consul, minister, government.¹

The acquisition and settlement of Tangier highlighted the enduring commercial importance of the Mediterranean for seventeenth-century England. Both early modern commentators and modern historians have understood that the expansion of English trade into the Mediterranean was a vital component to the country's wider commercial expansion. The growth of English commerce in the Mediterranean also raised ideological and practical questions for the political organization of overseas trade. In a maritime basin where the Crown struggled and initially failed to obtain a territorial foothold, English merchants fell under the authority of foreign sovereigns and the jurisdiction of foreign courts. During the first half of the seventeenth century, this situation was typical of England's wider expansion, as merchants and travelers adapted to local law and customs in regions where the English did not dominate.² Yet, as the Crown increasingly

¹ "...gli inglesi vogliono dominare, ed essere indipendenti: per un più piccolo affare di un privato inglese, il loro corpo ne fa subito un negoziato di nazione, di stato; impegnano il loro console, ministro, e la loro corte," Stefano Bertolini, "Del Commercio di Livorno," c. 1758, transcribed in Francesco Mineccia "Economia e società a Livorno durante la Guerra dei Sette Anni attraverso alcune annotazioni inedite di Stefano Bertolini," *Ricerche storiche* 13, no. 1 (Gennaio-Aprile 1983): 227. The translation of this quotation comes from Michela D'Angelo, "The British Factory at Leghorn: A Kind of Chamber of Commerce *cum* Consulate," in *Consolati di Mare and Chambers of Commerce: Proceedings of a Conference held at the Foundation for International Studies (Valletta, 1998)*, ed. Carmel Vassallo (Marsa: Malta University Press, 2000), 121.

² Alison Games, *The Web of Empire: English Cosmopolitans in an Age of Expansion, 1560-1660* (Oxford: Oxford University Press, 2008), *passim*.

sought to regulate and protect English trade, its efforts to establish the authority of its consuls and diplomats over overseas merchants collided with the jurisdiction of foreign princes over their own ports. The relationship between the extraterritorial authority of the Crown and the territorial sovereignty of southern European states distinguished the trading regime of the western Mediterranean from those of the Levant and the Indian Ocean. The Ottoman Empire and Indian Ocean states delegated jurisdiction over communities of European merchants to those merchants' consular and corporate representatives. Conversely, southern European princes linked their jurisdictional authority over foreign merchants to the territorial sovereignty they exercised over their cities. The inability of the Crown to establish the authority of its consuls and diplomats over English merchants in foreign ports differentiated the commercial and political environment of European port-cities from that found in Levantine and Indian Ocean trading centers.

During the second half of the seventeenth century, the expansion of imperial and corporate sovereignty extended the extraterritorial authority of English institutions and English law around the world. Despite the ideological and institutional differences that distinguished regulated companies like the Levant Company from join-stock corporations like the East India and Royal African Companies, these bodies all regulated English trade and administered justice over English merchants in distant cities and foreign ports. In the Levant and around the Indian Ocean, consular and corporate authority was central to the organization of English trade and coexisted with indigenous sovereignty. In the western Mediterranean, on the other hand, the Crown tried and failed to extend its jurisdictional authority over English merchants living in foreign ports. The refusal of these foreign

states to acknowledge the jurisdictional authority of English officials within their borders signaled the gradual ascendance of the territorial state in western Europe. This gradual differentiation of jurisdictional regimes over the course of the seventeenth and eighteenth century helped both to define the commercial and diplomatic relationship between European polities and to contrast the political organization of Europe from that of the wider world.

The experience of English merchants in southern European ports affirmed broader seventeenth-century conceptions of the relationship between geography, political conditions and commercial organization. According to the jurist Charles Molloy, writing in 1677, the corporate organization of trade was preferable wherever “the Places may bear it; as that to the *Indies, Turkey, Hambourough*, and some others.” Conversely, trade was best left open where it “will not bear” corporate organization, “as the *Canaries, France*, or any of those Places on this side the Line.”³ At the end of the seventeenth century, the commercial writer John Houghton further expanded and clarified this geographical distinction between zones of corporate and open trade when he argued that corporate regulation was unnecessary for merchants trading to ports in western Europe, where princes ruled according to “stated laws” and where merchants enjoyed the diplomatic protection of the English state.⁴ The legal and regulatory differentiation of

³ Charles Molloy, *De Jure Maritimo et Navali*, 2nd ed. (London, 1677), 434.

⁴ John Houghton, *A Collection for the Improvement of Husbandry and Trade*, 4 vols. (London, 1727-28), 2: 6; Houghton's analysis of the political conditions that called for different forms of commercial organization dated from 1696; Houghton's views on corporate trade are also cited by Perry Gauci, *The Politics of Trade: The Overseas Merchant in State and Society, 1660-1720* (Oxford: Oxford University Press, 2001), 115, n. 22; James Mather, *Pashas: Traders and Travellers in the Islamic World* (New Haven: Yale University Press, 2009), 232-233. While studies of the ideological framework of seventeenth-century trade have concentrated on the rivalry between free and corporate trade, these debates took place within the context of more subtle conceptions as to the political organization of overseas trade. On ideological debates surrounding corporate trade, see also Philip J. Stern, *The Company-State: Corporate Sovereignty and the*

western Europe from both the Muslim Mediterranean and the wider world was, however, a more contested and uncertain process than Molloy and Houghton's analyses of corporate trade would suggest.

The institutional evolution of English merchant communities in southern Europe at once revealed political and ideological continuities between England's expansion into the Mediterranean and the wider development of the English empire and illustrated how those histories diverged. Jurisdictional disputes regarding legal authority over English merchant communities in Italian port-cities blurred the line between those communities and their counterparts in the Levant. Efforts to establish the jurisdictional authority of English courts and officials over English merchants in Italian port promised to substitute English adjudication of intranational cases for that of local courts. The extension of English jurisdiction into Italian ports would have replicated the layered sovereignties and jurisdictions that characterized Levantine and Indian Ocean ports. However, assertions of the jurisdiction of English courts and consuls over cases arising in foreign ports raised the question of how far the extraterritorial authority of the English state extended over its overseas subjects and how that authority intersected with the sovereignty of Mediterranean states. Moreover, the efforts of consuls and diplomats to establish their control over merchants in foreign ports exemplified the weak political ties between the English state and merchant factories. Consequently, even as English corporations and the English state expanded their jurisdictional and sovereign authority around the Atlantic and Indian Oceans, a different process characterized the western Mediterranean. The

Early Modern Foundations of the British Empire in India (Oxford: Oxford University Press, 2011), chap. 2, "'A Sort of Republic for the Management of Trade': The Jurisdiction of a Company-State."

failure of the Crown to establish its extraterritorial authority in Italian ports thus helped to differentiate the legal and political conditions of Europe from those found elsewhere in the wider world.⁵

I. *Consuls and Factories*

In the second half of the seventeenth century, the growing power of the Crown reshaped the relationship between the state and English merchants in the Mediterranean. Following the initial Elizabethan forays into the Mediterranean, merchants took up residence in ports around that sea. In particular, English merchants gravitated to the burgeoning ports of Livorno in Tuscany and of Smyrna on the west coast of Anatolia.⁶ In these commercial centers, merchants contributed to the growth of English trade but also integrated themselves into preexisting commercial and cultural patterns. English merchants thus entered into close commercial relationships with Italian, Jewish and Muslim merchants, turned to local courts to adjudicate their disputes and even held civic office in the places where they settled.⁷ Consequently, although these merchants and their

⁵ Eliga H. Gould, "Zones of Law, Zones of Violence: The Legal Geography of the British Atlantic, circa 1772," *The William and Mary Quarterly*, 3rd. ser., 60, no. 3 (July 2003): 471-510.

⁶ Gigliola Pagano de Divitiis, "Il porto di Livorno fra Inghilterra e Oriente," *Nuovi studi livornesi* 1 (1993): 43-87; eadem., *English Merchants in Seventeenth-Century Italy*, tr. Stephen Parkin (Cambridge: Cambridge University Press, 1997), passim. On the English community at Livorno see particularly, Michela D'Angelo, "The British Factory at Leghorn: A King of Chamber of Commerce *cum* Consulate," in Carmel Vassalo, ed., *Consolati di Mare and Chambers of Commerce: Proceedings of a Conference held at the Foundation for International Studies (Valletta, 1998)* (Marsa: Malta University Press, 2000), 113-125; eadem., "The Scale or Magazin of an Universall English Trade," in *Rapporti diplomatici e scambi commerciali nel Mediterraneo moderno*, ed. Mirella Mafri, (Salerno: Rubbettino, 2004): 327-349; eadem., *Mercanti inglesi a Livorno, 1573-1737: Alle Origini di una "British Factory"* (Messina: Istituto di Studi Storici "Gaetano Salvemini," 2004); eadem., "Mercanti Inglesi a Livorno (1573-1796)," in *Livorno, 1606-1806: Luogo di incontro tra popoli e culture*, ed. Adriano Prosperi (Turin: U. Allemandi, 2009), 350-360. On the English factory at Smyrna, see Daniel Goffman, *Britons in the Ottoman Empire*

⁷ For example, the English consul of the Morea in the 1630s and 1640s, Henry Hyde purchased various forms of Ottoman office, see Goffman, *Britons in the Ottoman Empire*, 52-53.

successors organized themselves into national communities, or factories, they did not constitute or function as discrete national units.⁸ In this respect, English merchants in the Mediterranean resembled their counterparts around the Atlantic world. Early-modern merchants lived in a “largely decentralized world” that was “remarkable for a weak implementation of central governments’ directive and a loose adherence to metropolitan behavioral and cultural trends.”⁹ Nevertheless, the early-modern period was also one during which trade became an “affair of state.”¹⁰ During the reign of Charles II, England’s ministers and diplomatic representatives sought to establish a greater degree of state control over English merchants in foreign ports. The Crown affirmed its authority to appoint consuls to represent English merchant communities and repeatedly attempted to subject overseas merchants to the jurisdiction of English courts. This expansion of the English state into the Mediterranean world called into question where legal and sovereignty authority over merchants in foreign ports lay.

The organization of communities of foreign merchants differed between ports and regions, but partially self-governing associations of foreign merchants were ubiquitous in the early-modern world and were a fundamental response to the challenges of cross-

⁸ Molly Greene, “Beyond the Northern Invasion: The Mediterranean in the Seventeenth Century,” *Past & Present*, no. 174 (February 2002): 43-44, 57. See also, Rhoads Murphey, “Merchants, Nations and Free-Agency: An Attempt at a Qualitative Characterization of Trade in the Eastern Mediterranean, 1620-1640,” in *Friends and Rivals in the East: Studies in Anglo-Dutch Relations in the Levant from the Seventeenth to the Early Nineteenth Century*, ed. Alastair Hamilton, Alexander H. De Groot, and Maurits H. van den Boogert (Leiden: Brill, 2000), 25-58.

⁹ David Hancock, *Oceans of Wine: Madeira and the Emergence of American Trade and Taste* (New Haven: Yale University Press, 2009), p. xvii; Gauci, *The Politics of Trade*, 3-4.

¹⁰ Istvan Hont, *Jealousy of Trade: International Competition and the Nation-State in Historical Perspective* (Cambridge, MA: The Belknap Press of Harvard University Press, 2005), chap. 2, “Free Trade and the Economic Limits to National Politics: Neo-Machiavellian Political Economy Reconsidered,” 185-188.

cultural trade.¹¹ During the Middle Ages, Italian merchants around the Mediterranean and in northern Europe banded together to form “nations” which constituted semi-autonomous commercial and judicial units, allowing disputes to be resolved according to merchants’ native laws and providing them with some measure of mutual support and protection.¹² By the early seventeenth century, the institutional structure of such merchant colonies had weakened considerably in most European cities, as increased commercial integration and state centralization of political and legal authority made such autonomous national communities increasingly anachronistic. As a result, the seventeenth-century English factories that emerged in southern European ports like Livorno and Lisbon were highly informal bodies.¹³

In the years immediately following the Restoration, diplomatic correspondence both reflected growing official interest in the condition of English trade to foreign markets and affirmed the need for firmer governance of overseas merchants. In addition to their concern for the vulnerability of merchants in foreign ports, officials also feared that disorganization and dissension within English factories would undermine the nation’s commercial advantages. In 1668, the English resident at Lisbon, Sir Robert

¹¹ Philip D. Curtin, *Cross-Cultural Trade in World History* (Cambridge: Cambridge University Press, 1984), 4, 132.

¹² Paola Subacchi, “Italians in Antwerp in the Second Half of the Sixteenth Century,” in Hugo Soly and Alfons K. L. Thijs, eds., *Minderheden in Westeuropese Steden (16de-20ste eeuw)* (Brussels and Rome: Institute Historique Belge de Rome, 1995), 75-76; Marie-Christine Engels, *Merchants, Interlopers, Seamen and Corsairs: The 'Flemish' Community in Livorno and Genoa (1615-1635)* (Hilversum: Valoren, 1997), 126.

¹³ Michela d'Angelo exaggerates the institutional character of English factories and the extent to which their “aim was to form and act as a body,” in “The British Factory at Leghorn: A King of Chamber of Commerce cum Consulate,” 113-126. The best description of how factories functioned in the Levant comes in Goffman's, *Britons in the Ottoman Empire*, chap. 3, “Three English Settlements,” and chap. 4, “English Traders on the Ottoman Frontier.” See also Alfred C. Wood, *A History of the Levant Company* (Oxford: Oxford University Press, 1935), 219-228.

Southwell, attributed dissension among the merchants there to the pernicious influence of civil war and Parliamentary rule: “They are for the most part young men who, having been bred up in the Licentious Principles of the late bad Times, have not as yett mended their manners nor their Opinions.”¹⁴ Conversely, Sir John Finch, the English resident at Florence between 1666 and 1672 and subsequently ambassador to the Ottoman Empire, thought that legal squabbles and disputes were typical of English merchant communities overseas. In 1666, Finch expressed this view in a letter to the Secretary of State, Lord Arlington, in which he described the unruly nature of the English merchant community at Livorno and commented, “your Lordship do’s very well know the temper of the Nation, who have too true a Character from others of never agreeing abroad; and therefore tis easily Imaginable that where Interest and Profitt make way for differences, as well as Naturall Inclinations, that Divisions cannot probably be wanting.”¹⁵ According to Finch, dissensions within the factory were a “disease” that “like a Cancer hath devoured the whole factory of Livorno.” Few English merchants or factors had brought great “Estates” back from that city, for many had squandered their money in Tuscan courts in the course of interminable lawsuits and legal cases.¹⁶

¹⁴ Quoted in Violet Barbour, “Consular Service in the Reign of Charles II,” *The American Historical Review* 33, no. 3 (April 1928): 555.

¹⁵ Finch to Arlington, 27 October/6 November 1666, TNA, SP 98/7. While serving as ambassador to the Ottoman Empire, Finch apologized that his reports “afford little of Variety, things running on in One Equall Channell; Disputes, Controversy;s, and Novelty’s, which are the Divertisement of Men of Buissenesse,” Finch to Williamson, Pera, 31 May 1676, TNA SP 97/19, f. 226r.

¹⁶ Finch to Arlington, Florence, 4/14 July 1665, TNA SP 98/6. See also Finch to [Arlington], Florence, 3/13 June, 1665, TNA SP 98/5. M. Jonah Brewer’s analysis of French merchants in the Levant, however, illustrates that official complaints about the litigiousness of merchant communities were not necessarily reflective of either more typical but mundane interactions between merchants or the commercial health of those communities, see M. Jonah Brewer, “Gold, Frankincense, and Myrrh: French Consuls and Commercial Diplomacy in the Ottoman Levant, 1600-1699,” (PhD Diss., Georgetown University, 2002), 205-208.

Behind official criticism of overseas merchants lay the assumption that overseas trade required close governance and regulation to ensure that the benefits of commerce flowed to the state and to the whole nation and were not simply wasted in merchants' self-interested commercial activity. Finch expounded this view in a letter decrying the unfavorable balance of trade between England and Italy. According to Finch, "the Merchant as Merchant is no proper Judge for his end being onely gain, so long as he can accomplish that End by bringing in forrain Commodities, tis not onely Impossible there should be ready money brought in; but let his Majesties lawes be what they can be, tis as impossible that what mony is in England should be kept from being carry'd Out."¹⁷ For seventeenth-century officials and commercial thinkers, the effective regulation of trade and mercantile activity was vital to ensure that the benefits of commerce accrued to the state and political nation.

During the first decades of England's commercial expansion, the belief that trade would flourish only if properly governed was an ideological mainstay of arguments for the corporate organization of trade.¹⁸ Although John Bland, the first mayor of Tangier, advocated free trade between the North African colony and England's American plantations in 1669, a decade earlier he had instead recommended that all English trade be organized on a corporate basis. In 1659, Bland argued that all trade should "center in Companies and Corporations, the only Foundation and Pillar upon which a lasting Monument of Trade and Manufactories is to be built and preserved." According to Bland,

¹⁷ Finch to Arlington, 6/16 October 1668, TNA SP 98/9, f. 330v-331r. See also, Perry Gauci, *The Politics of Trade*, 1-2, 183.

¹⁸ Thomas Leng, "Commercial Conflict and Regulation in the Discourse of Trade in Seventeenth-Century England," *The Historical Journal* 48, no. 4 (December 2005): 943-944.

trade was “more judicially managed, both for Profit and Safety” when conducted by companies rather than by particular individuals.¹⁹ For the proponents of company trade, these bodies ensured that merchants cooperated in the face of foreign competition and allowed them to present a united front before foreign governments.

In the second half of the seventeenth century, however, both political commentators and government officials increasingly called for the state itself to intervene more forcefully in the management of trade and to assume responsibilities that it had previously delegated to companies. For instance, a memorial, possibly by Finch, warned Charles II that the Levant Company had grown rich under the privileges of its charter “as if they were a Little Republicque within your Monarchy.” This critique of the Levant Company echoed Thomas Hobbes’s 1651 attack on corporate bodies as “lesser commonwealths in the bowels of a greater, like wormes in the entrayles of a naturall man.”²⁰ According to Hobbes, corporations threatened the absolute and unitary sovereignty of the state. The author of the memorial against the Levant Company similarly warned that it threatened to usurp the prerogatives of the Crown as it sought to secure its right to appoint England’s ambassador to the Ottoman Empire and to keep the consulage it collected from non-English merchants who traded under the protection of the English flag. If the Company gained such privileges, the memorialist continued, England’s ambassadors at Constantinople would become the Company’s “Stipendaries & Vassalls, & obliged to serve their Lustes & Pleasures (good or badd) agaynst the Law or

¹⁹ John Bland, *Trade revived* (London, 1659), 3.

²⁰ Thomas Hobbes, *Leviathan, or The Matter, Forme, and Power of a Common Wealth, Ecclesiastical and Civil* (London, 1651), pt. 2, chap. 29, 174, quoted in Stern, *The Company-State*, 8.

Crowne.”²¹ Although Crown interest in Levantine affairs remained limited until the end of the seventeenth century, recognition that the Crown should assume a more significant role in the regulation of English trade in the Mediterranean illustrated a broader process whereby the state took on responsibility for the regulation of England’s overseas trade.

During the second half of the seventeenth century, the growth of overseas trade generated considerable official concern both for the security of merchants trading to foreign ports and for the limited ability of the state to control those merchants. The acquisition of Tangier provided one avenue to bring merchants in the Mediterranean under the authority of the English government and English laws.²² An anonymous account of the advantages of Tangier from 1661 thus favorably compared the prospects of English merchants who resided in a factory established “securely under the justice of their owne prince” to those of merchants at Algiers who were constantly at risk of ruin and of being made hostages in event of war.²³ Two decades later, Sir Henry Sheeres expanded on this point when he explained the advantages that merchants would receive by trading from Tangier instead of Cadiz. According to Sheeres, Tangier was a city where “our Estates run no hazard of seizure of Confiscation” and in which “his Majesties

²¹ “Narrative of some of the Levant Companies Proceedings with his Late Majesties & Your Crowne,” TNA SP 97/19, f. 266r-v. See also, Mather, *Pashas*, 140.

²² Benjamin Worseley observed that a chief benefit of the plantation trade was that merchants were able to carry out their business under their own laws and within a familiar cultural and political environment, see Leng, “Commercial Conflict and Regulation,” 950-952.

²³ “Sundry particulars relating to the Towne & roude of Tanger,” BL MS Harl 1595, f. 20v-22r. This paper is anonymous and undated, though a copy appears in Nathaniel Luke's wastebook immediately before a memorial by James Wilson, dated 5 October 1661; BL Sloane MS 1956. The manuscript catalogue most likely errs in listing these separate memorials together (as item # 57) and there is no reason to think that the “Sundry particulars” was written by Wilson, as the memorials are separate in all other manuscript volumes. Luke himself is, of course, a possible author, especially as he had had previous experience of Morocco. However, the authorship remains uncertain.

Subjects rest under the protection of their own Country Laws and Government, and in the liberty of the exercise of their own Religion.”²⁴ Possession of Tangier was one potential solution to the threat of apparently arbitrary foreign justice and restrictions on the practice of the Protestant religion in foreign states. The failure of Tangier as a commercial port or entrepôt meant that the regulation and protection of English merchants in the western Mediterranean depended wholly on the ability of the Crown to extend its reach into foreign ports.

The commitment of the Crown to assuming a larger role in the regulation of English merchants was most evident in the evolution of the office of consul during this period. Early modern consuls were merchants who acted as representatives of their national communities in foreign cities and served as informal arbitrators of disputes that arose between members of the nation. They also served as their nation’s advocates and acted as linguistic and cultural mediators for merchants and ships’ masters.²⁵ At the start of the seventeenth century, consuls were generally selected by merchants themselves or appointed by the government of the foreign state itself.²⁶ Accordingly, England’s first consuls at Livorno were appointed, first, by the maritime guild of Trinity House and then by the Levant Company, as merchants replaced mariners as the foundation of the English

²⁴ [Hnery Sheeres], *A Discourse Touching Tangier* (London, 1680), 12-13.

²⁵ The best study of a seventeenth-century English consul may be found in Sonya Anderson, *An English Consul in Turkey: Paul Rycaut at Smyrna, 1667-1678* (Oxford: Clarendon, 1989). For a general description of the role and responsibilities of consuls, see D. B. Horn, *The British Diplomatic Service, 1689-1789* (Oxford: Clarendon Press, 1961), 238-240.

²⁶ Louis Dermigny, *Escales, échelles et ports francs au Moyen Age et aux temps modernes* in *Les grandes escales*, 3^e partie, *Période contemporaine etsynthèses générales*, Recueils de la société Jean Bodin, 34 (Brussels: Éditions de la librairie encyclopédique, 1974), 485-486.

community at the Tuscan port.²⁷ As late as 1632, the diplomat and courtier Sir Thomas Roe explained to a Tuscan official that it was not customary for consuls to obtain royal confirmation, since the power to establish those figures lay with merchants alone.²⁸ Consuls were thus not state officials. Moreover they tended to be marginal figures who were highly integrated into the culture of the port where they resided. For example, the English consul at Livorno between 1634 and 1665, Morgan Read, was a Catholic who held positions in the port-city's civic government.²⁹ The liminal character of such consuls allowed them to bridge the cultural and linguistic barriers that separated English merchants from foreign societies but made their loyalties suspect as commercial competition became intertwined with state politics.

Over the course of the second half of the seventeenth century, the informal quality of consulships gave way to a more official character. During the 1660s, the Crown established its sole authority to appoint diplomatic and consular representatives in the Mediterranean. Thomas Clutterbuck was nominated by the members of Trinity House to be consul at Livorno and confirmed in that position by the Crown in 1669; however, his successor, Thomas Skinner, appears to have received his official appointment as consul on the basis of John Finch's recommendation, leaving the representatives of Trinity

²⁷ Paolo Castignoli, "Aspetti sstituzionali della nazione inglese a Livorno," in *Atti del Convegno di Studi "Gli Inglesi a Livorno e all'isola dl'Elba" (Sec. XVII-XIX)* (Livorno: Bastogi, 1980), 105-106; Stefano Villani, "I consoli della nazione inglese a Livorno tra il 1665 e il 1673: Joseph Kent, Thomas Clutterbuck e Ephraim Skinner," *Nuovi studi livornesi* 11 (2004), 12.

²⁸ Sir Thomas Roe to Don Pietro di Medici, 3/13 August 1632, TNA SP 98/3, f. 152r.

²⁹ Horace Albert Hayward, "Gli inglesi a Livorno al tempo dei Medici," in *Atti del Convegno "Livorno e il Mediterraneo nell'età Medicea"* (Livorno: U. Bastogi Editore, 1978), 270.

House to complain that they had not been consulted in the selection process.³⁰ Moreover, English ministers appear to have become increasingly reticent in allowing either Catholics or foreigners to serve as consuls.³¹ Although merchants might recommend or lobby for a particular candidate, the appointment of consuls rested with the Crown.³² The transformation of consuls from private representatives of autonomous merchant communities into quasi-public officials highlighted a broader shift whereby states became increasingly central to the organization of Mediterranean trade.

However, as consuls became representatives of states as well as of factory communities, they threatened the authority of local courts and officials over foreign merchants residing in their port cities and threatened to turn commercial disputes into diplomatic affairs. Consequently, the emergence of dense consular networks over the course of the seventeenth century was an uneven and controversial process. In the 1670s, French efforts to establish an official consul for the Duke of Savoy's ports at Nizza (Nice) and Villafranca (Villefranche) met with intense opposition from local officials and ducal ministers. Officials worried that consular duties might deter French ships from stopping at those Savoyard ports and questioned whether French merchants actually required the assistance of a consul, since they had long experience trading to Savoy.³³

³⁰ Draft Petition of the Master Wardens and Assistants of Trinity House to King and Privy Council and the Petition of the Master Wardens and Assistants of Trinity House to the Duke of York, Bodleian Library: Rawlison MSS A180, f. 195r-195v, 204r. The members of Trinity House particularly complained that, as a merchant himself, Skinner, "cannot be a competent Judge in determining differences between Merchants and Mariners." See also, Villani, "I consoli della nazione inglese," 18.

³¹ See also Pagano de Divitiis, *English Merchants in Seventeenth-Century Italy*, 72-73; D. B. Horn, *The British Diplomatic Service*, 248-249.

³² Barbour, "Consular Service in the Reign of Charles II," 560-561.

³³ "Ne qui vi concorre alcuna delle raggioni, che suole mover l'animo delle nationi straniere alla necessità d'un luor Console, cioè lontananza di Paese differenze di linguaggio, e puoca corrispondenza che tutto

The author of an anonymous memorial, probably from the mid-1670s, argued that the presence of a French consul would harm the trade of Nice and Villefranche before further warning that a foreign consul would chiefly aim to favor the interests of his own nation. Already the French who took cases before Savoyard officials proved to be insufferable, “but how much greater would this disorder grow if a consul for their nation were established there, [for] none would ever appear but with his assistance, it would be enough to claim to be French to pretend a favorable sentence, and every private maritime or mercantile interest would be made a consequence of state.”³⁴

The growth of English state and commercial power similarly transformed the character of England’s commercial presence in foreign ports. In particular, merchants began to make stronger and more open demonstrations of their English identity, as when, in July 1666, the members of the factory at Livorno went “unanimously” to the governor of the city to request that the Dutch not interfere with a celebration of the supposed English “victory” at the Four Days’ Battle.³⁵ Merchants also became bolder in displays of their Protestantism. During the early decades of the seventeenth century, English merchants in Italian ports like Livorno were frequently called before the Inquisition and

Cessa nel nostro caso,” in “Memoria de senti del Signore President Truchi circa il ferrando che pretendeva il carico di Console in villafranca, e Nizza,” AST Città e Contado di Nizza, Consoli Stranieri, Mazzo 1, Fascicolo 7, 138.

³⁴ “Ma ó quanto Mai crescerebbe questo disordine se si stabilisce il Console della Loro natione, non comparirebbe Mai alcuno Senza la sua assistenza, bastarebbe d’esser francese per pretendere la Sentenza favorevole, & ad ogni pass d’un Interesse privato Martimo ó Mercantile sene farebbe una conseguenze di stato,” “Considerationi Sopra Lo Stabilimento di Console della Natione francese nella Città di Nizza e nel Luogo e Porto di Villafranca nella persona del Signore Franceso Ferrand Pariggiano,” AST Città e Contado di Nizza, Consoli Stranieri, Mazzo 1, Fascicolo 8, 167.

³⁵ Finch to Arlington, Florence, 14/24 July 1666, TNA: SP 98/7. The Four Days’ Battle was, in fact, a defeat for the English at the hands of the combined Franco-Dutch fleet.

many abjured the Protestant faith.³⁶ Conversely, during the later half of the century, the officers of the Inquisition rarely bothered English merchants at Livorno and England's diplomatic representatives in Tuscany instead lobbied for permission to maintain a Protestant preacher there to conduct religious services for the English factory.³⁷ The grand dukes refused to allow a Protestant preacher to reside in Livorno until the early eighteenth century, but such requests highlight the increasingly assertive attitude of merchants and their representatives in the face of local authority.

During the second half of the seventeenth century, merchants increasingly sought and received the assistance of the Crown and of its diplomatic representatives when they encountered legal or political difficulties in foreign ports. In Tuscany, John Finch pressed for commercial privileges for English merchants and ships that would reduce the time ships spent in quarantine, open Tuscany's internal markets to English goods and improve commercial conditions at Livorno.³⁸ English merchants at Genoa requested state support to obtain the payment of debts owed to them by members of the Genoese Senate.³⁹

Meanwhile, in 1676, the Portuguese Ambassador in London echoed Savoyard officials

³⁶ Barbara Donati, *Tra Inquisizione e Granducato. Storie di inglesi nella Livorno del primo seicento* (Rome: Edizioni di storia e letteratura, 2010), 33-38, 181-185.

³⁷ Stefano Villani, "'Cum scandalo catholicorum...'. La presenza a Livorno di predicatori protestanti inglesi tra il 1644 e il 1670," *Nuovi studi livornesi* 7 (1999): 9-58. In comparison, English residents in Lisbon was permitted to worship privately by the Anglo-Portuguese treaty of 1654 and the consul at Lisbon was allowed to maintain a chaplain after 1657, see L. M. E. Shaw, *The Anglo-Portuguese Alliance and the English Merchants in Portugal, 1654-1810* (Aldershot: Ashgate, 1998), 170-172.

³⁸ For instance, see Finch to Arlington, Livorno, 9/19 March 1668, TNA SP 98/9, f. 107r; Finch to Arlington, Florence, 2/12 July 1668, TNA SP 98/9, f. 220v; Finch, "My Memoriall delivered to the Great Duke, November the 2nd, 1670," TNA SP 98/12, f. 83r-84v; Cipolla, *Il burocrate e il marinaio*, 95-98, 105-109.

³⁹ "Memorial of my Lord Ambassador [Lord Fauconberg] to the Republic of Genoa touching monies due from great men to several English marchants [sic]," Genoa, May 1675, TNA SP 79/2; Finch to Arlington, Genoa, 19/29 August 1673, TNA SP 79/2; "The Humble Petition of severall merchants your Majesties subjects tradeing for Genova," TNA SP 79/2. See also, Grendi, "Gli inglesi a Genova," 252-253.

when he complained of a report made to the king by the Council of Trade, based on the complaints of an English merchant at Lisbon. According to the ambassador, the English had not only been badly informed regarding the case, “but the interested parties wish to make an affair of state of a private case, and a purely judicial matter.”⁴⁰

Yet merchants could also object to official intervention in their affairs when they thought such intervention was not in their own interest. The merchant Thomas Dethick petitioned Arlington in 1669 to request that he intercede with Finch, after the resident intervened in a lawsuit between Dethick and another member of the English factory at Livorno. Dethick complained that Finch had carried the matter “so farre as to make the Interest of State engaged in a private Quarrell of Merchants.”⁴¹ Conversely, Finch complained regularly that merchants put their private interests ahead of those of the wider nation. For example, during the First Anglo-Dutch War, he reported that the members of the factory had failed to support his endeavors to obtain the restitution of an English merchantman seized by a Dutch privateer that had violated the neutrality of the port of Livorno, “all the English factory abandoning here his Majesties Interest because they had Secur’d their own and concluding they had a better prospect from the Assurance Office then from the release of the ship.”⁴²

Accusations that merchants were more concerned with their personal interest than with the national good further suggest the looseness of the political and institutional

⁴⁰ “Mais que les Interesses veulent faire une affaire d’Etat d’une cause particuliere, et purement de Justice,” “The Portugall Embassadors Answer to the Memoriall deliverd him the 27th of November concerning Samuel Maddox &c,” 19/29 December 1676, TNA SP 98/13, f. 210r.

⁴¹ “To the Right Honorable Hnery Lord Arlington One of his Majesties Principall Secretary’s of State. The humble petition of Thomas Dethick of Livorne Merchant,” TNA SP 98/10, f. 621r.

⁴² Finch to Arlington, Florence, 15 September 1665, TNA SP 98/6.

bonds that linked overseas merchants both to their home state and to one another. The events that followed a diplomatic incident at Livorno late in 1670 illustrate the limited authority that consuls possessed over merchants. In October 1670, the English merchant Slaughter Lee sought to prevent his debtor, the bankrupted Portuguese merchant Francesco Mendes, from leaving Livorno onboard a papal galley. After asking Livorno's governor, Antonio Serristori, to stop Mendes from leaving the city, Lee went to the consul Thomas Clutterbuck for assistance and the two subsequently turned to Sir John Harman, the captain of an English man-of-war in port, to prevent the galley from sailing. Harman wrote to Serristori to request that Lee's pretensions against Mendes be considered or he "would do that which appears to me appropriate for the honor of the King of Great Britain and the Justice of his Subjects living in this city."⁴³ Serristori had already ordered Mendes to provide further security for his creditors, so confrontation between the English warship and papal galley was avoided.⁴⁴ Nevertheless, Tuscan officials viewed Harman's threatening actions as a breach of the security of the port and blamed Lee for adopting a course of action that would have forced the Livornese garrison to defend the galley against the English ship.⁴⁵ Serristori recommended that Lee be

⁴³ "...altrimenté mi dichiaro di metter in essecutione quel che mi para conveniente per l'honor del Ré della Grand Britagnai Mio Signore e Giustitia elli suoi Suditi abitanti in Cotesta Citta," "Sir John Harman's letter to the Governor of Legorn in Mr. Lee's Case," 22 October 1670, TNA SP 98/10, f. 26r.

⁴⁴ A Tuscan account of the case of Lee, in the English translation, is contained in "An account of Mr. Lee's Case as they relate it," October 1670, TNA SP 98/12, 29r-32v; Lee's own account of the matter may be found in his "The Relation of Mr. Lee's Case with Mendes & the Governour of Legorn," October 4/14 1670, *ibid.*, f. 33r-36v. The events of the case are also recounted in "Negozio del Lee in conto del credito con il Mendes," ASF Mediceo del Principato, 1804, #27.

⁴⁵ Serristori to Bardi, Livorno 13 October 1670, ASF Mediceo del Principato, 1804, "Negozio del Lee in conto del credito con il Mendes."

punished for calling upon Harman's assistance in a matter of Tuscan justice.⁴⁶ Lee was subsequently arrested and imprisoned at the order of the Grand Duke, but released shortly thereafter at the request of Finch and the English nation at Livorno.⁴⁷

The merchants at Livorno were unwilling to support Clutterbuck's efforts to turn the controversy surrounding Lee and Mendes into a political and national matter.

Following Lee's arrest, Clutterbuck wrote to Finch to warn him that if the English did not protest this action, "Its insecure for Any of the Kings, our Masters Subject, to Continue in this State."⁴⁸ Many of the merchants at Livorno were similarly concerned by the arrest of Lee, particularly because Tuscan officials refused to specify any particular reason for his imprisonment.⁴⁹ Yet, although the merchants "unanimously agreed" in a national meeting to draw up a petition to the king for redress for the treatment of Lee, most were unwilling to sign in.⁵⁰ Clutterbuck explained that "too much of Faction, hindred theyr Subscribing the Same."⁵¹ Few of the merchants appear to have supported Lee in his claims against Mendes or his decision to appeal to English officials for help rather than continuing to

⁴⁶ Serristori to Bardi, Livorno 13 October 1670, ASF Mediceo del Principato, 1804, "Negozio del Lee in conto del credito con il Mendes."

⁴⁷ "Relazione mandata dall'Governatore di Livorno sopra il fatto del Lee," ASF Mediceo del Principato, 1824, #11; Finch to Arlington, Florence, 11/21 October 1670 and 4 November 1670, TNA SP 98/12, f. 48v-49v, 79r.

⁴⁸ Clutterbuck to Finch, Pisa, 10/20 October 1670, TNA SP 98/12, f. 42r.

⁴⁹ Isaac Lawrence to [Clutterbuck], Livorno, 19 October 1670, TNA SP 98/12, f. 43r. Lawrence's letter to Finch was undersigned by six other prominent merchants including Charles Longland, Thomas Dethick and David Sidney. Finch to Arlington, Florence, 11/21 October 1670, TNA SP 98/12, f. 48r-v.

⁵⁰ Finch to Arlington, Florence, 18/28 October 1670, TNA SP 98/12, f. 67r. The petition appears at f. 87r.

⁵¹ Clutterbuck to Williamson, Livorno, 12/22 December 1670, TNA SP 98/12, f. 134r.

pursue the matter through Livorno's courts.⁵² In particular, Clutterbuck suspected that one merchant did not have "soe publique a spirrit As Hee pretends to have" on account of the settlement he had previously reached with Mendes. Only two merchants signed the document and Clutterbuck was left to wish, "wee could once fynde the way (which I feare my eyes will never see on this place) to bee truer englishmen then now we are."⁵³ Clutterbuck further commented that he intended to concern himself less with "publique affaires" until he found "more Constancy, & Sweetenesse Amongst the members of our Nation."⁵⁴ Meanwhile, Charles II requested that Lee be compensated for his sufferings, but Tuscan ministers supported Serristori and the necessity of punishing Lee for actions that threatened the peace of Livorno and the dignity of Tuscan courts.⁵⁵

During the second half of the seventeenth century, the growing power of the English state changed the politics of merchant factories. Consuls and diplomats took an increasingly active role in the affairs of communities of overseas merchants. In the process, they sought both to advance the commercial interests of merchants and to regulate their conduct in accordance to what they perceived to be the interest of the nation and state. Yet the idea of English factories as unified, national communities was an aspiration rather than a reflection of the usual behavior of the merchants. Clutterbuck's complaints against the factory following Lee's arrest echoed those previously made by

⁵² "An account of Mr. Lee's Case as they relate it," October 1670, TNA SP 98/12, 31v; Serristori to Bardi, Livorno, 18 October 1670, ASF Mediceo del Principato, 1804, "Negozio del Lee in conto del credito con il Mendes."

⁵³ Copy of a letter from Clutterbuck to Finch, Livorno, October 19/29 1670, TNA SP 98/12, f. 70r.

⁵⁴ Clutterbuck to Finch, 31 October 1670, TNA SP 98/12, f. 71r.

⁵⁵ King in Council, Whitehall, 25 November 1670, TNA SP 98/1,2 f. 121r; "Great duke's answer to the Complaints," TNA SP 98/13, f. 138v-139r; Grand Duke's letter to Charles II, 24 April 1671, ASF Mediceo del Principato, 1824, #11.

Finch and Southwell regarding the factiousness of the factories at Livorno and Lisbon. Clutterbuck described his negotiations with Tuscan officials and the factory in political terms as “publique affaires,” but the English merchants at Livorno declined to support his interpretation of their interest. These merchants refused to endanger their own commercial position and were unwilling to support a consul who they thought was more concerned with his personal advancement than with theirs.⁵⁶ Since consuls and diplomatic representatives lacked coercive power over merchants, their authority depended almost entirely on their ability to convince merchants to follow a particular course of action and to develop a consensus among them. Even as national communities in foreign ports were drawn into a closer relationship with the English state, the actual authority of the state over those communities remained highly limited.

II. *Extraterritorial Jurisdiction in the Italian States*

The Crown's efforts to extend state authority over English merchants in the Mediterranean found their most expansive expression in attempts to grant English consuls and courts jurisdiction over legal cases arising between English subjects in Italian port-cities. The jurisdictional authority of consuls was well established in the Levant and North Africa, where England's capitulations with the Ottoman Empire and subsequent treaties with the North African regencies gave English consuls and ambassadors the authority to adjudicate civil and criminal cases arising between members of the English

⁵⁶ On relations between Clutterbuck and the members of the factory at Livorno, see Finch to Arlington, Florence 20/20 September 1670, TNA: SP 98/12 19r; Finch to Arlington, Florence, 4/14 April 1671, TNA SP 98/13, f. 7r-v; Villani, “I consoli della nazione inglese a Livorno,” 16-17.

nation.⁵⁷ Conversely, debates over the right of consuls to adjudicate cases involving members of their nation in Italian ports set the authority of the sovereign over his or her subjects against the territorial sovereignty of Italian states. Italian opposition to consular jurisdictions ultimately limited English state authority over merchant factories and highlighted the political differentiation of European states from the imperial and provincial polities of North Africa and the Levant.⁵⁸

Debates over the right of consuls to adjudicate cases between members of their own nations underscored the existence of rival conceptions of state sovereignty in the early modern world. Even with the rise of the territorial state as a central unit of European political organization, sovereignty remained largely jurisdictional and personal in nature as jurists continued to define royal authority in terms of the allegiance that subjects owed their sovereign and the jurisdiction that he or she exercised over them.⁵⁹ The relationship between territorial and jurisdictional sovereignty proved to be a pressing legal and political problem through the early modern period.⁶⁰ In a report to the Privy Council regarding whether jurisdiction over a disputed Norwegian prize lay with English or Scottish courts, the English civil lawyer and secretary of state, Sir Leoline Jenkins, identified the coterminous bounds of these different forms of sovereignty as a defining

⁵⁷ Maurits van den Boogert, "Consular jurisdiction in the Ottoman legal system in the eighteenth century," *Oriente Moderno* 22, no. 3 (2003), 613-634.

⁵⁸ Biagi, "I Consoli delle Nazioni a Livorno," 362; Christian Windler, "Representing a State in a Segmentary Society: French Consuls in Tunis from the Ancien Régime to the Restoration," *The Journal of Modern History* 73, no. 2 (June 2001): 233-274.

⁵⁹ Peter Sahlins, *Boundaries: The Making of France and Spain in the Pyrenees* (Berkeley: University of California Press, 1989), 6-7; Paul Halliday, *Habeas Corpus: From England to Empire* (Cambridge: Belknap Press of Harvard University Press, 2010), 140-147.

⁶⁰ de Luca, "Beyond the sea: extraterritorial jurisdiction and English law," 333-337.

feature of the European state system, “From the usage of the *Western World*; each Sovereignty avoiding, as much as may be, to break in upon, or interrupt one the other in their Judicial Proceedings; as appears first by the modern Treaties, which do most of them provide, that Persons wronged shall seek and pursue their Remedies in Law, (not at their own Homes, but) in those Countries where they Wrongs have been done them.”⁶¹

In ports around the Mediterranean, consular jurisdictions revealed the complicated relationship between territorial sovereignty and legal authority in the early-modern world. Commentators on the law of nations generally understood consuls to be judges for the national communities they represented.⁶² However, the form of legal authority possessed by consuls varied widely around the Mediterranean. The extraterritorial jurisdiction of consuls was most fully established in the Levant, where the capitulatory agreements between the Ottoman Empire and European nations delegated jurisdictional authority over civil and criminal matters arising among foreign merchant communities to their respective consuls and ambassadors. In theory, these agreements did not compromise Ottoman sovereignty, since they incorporated foreign merchants and their representatives into the legal institutions of the Ottoman state.⁶³ Yet Europeans tended to see the

⁶¹ William Wynne, *The Life of Sir Leoline Jenkins, Judges of the High-Court of Admiralty* (London, 1724), 2: 762.

⁶² Abraham de Wicquefort, *The Ambassador and his Functions*, tr. John Digby (London, 1716), 40; Cornelis van Bynkershoek, *De foro legatorum liber singularis, a monograph on the jurisdiction over ambassadors in both civil and criminal cases*, tr. Gordon J. Laing (Oxford: Clarendon Press, 1946), 53. Informal arbitration of commercial disputes was not limited to consuls and was a widespread device by which early-modern merchants avoided formal and expensive litigation, see Francesca Trivellato, *The Familiarity of Strangers: The Sephardic Diaspora, Livorno, and Cross-Cultural Trade in the Early Modern Period* (New Haven: Yale University Press, 2009), 159.

⁶³ C. R. Pennel, “The origins of the Foreign Jurisdiction Act and the extension of British Sovereignty,” *Historical Research* 83, no. 221 (August 2010): 470-471; van den Boogert, “Consular jurisdiction in the Ottoman legal system,” 621.

capitulations differently. The views of the Secretary of State, Henry Coventry, regarding Ottoman interference in national disputes aptly reflected the sense that extraterritorial jurisdiction was essential to preserving the Crown's authority over subjects living under the sovereignty of another prince. Following reports of Ottoman intervention in a dispute within the French nation, Coventry warned of the harmful effect that would follow, "when the Turkish Officers shall decide Controversies between the Ambassadors and the Merchants, and that once obtained it will undeniably follow they will do the same betwixt the Merchants themselves who by that means will insensibly become more the Grand Visiers Subjects then their own Christian Sovereigns."⁶⁴

In European ports, consuls generally acted as informal arbiters of intra-national disputes. However, medieval or Levantine conceptions of consular authority still proved resilient. For example, John Bland proposed the establishment of consular courts in overseas ports to regulate English trade. Bland recommended that consuls be appointed to all of England's American plantations and to foreign cities where a merchant factory was present, where they, together with assistants chosen from among the local English merchant community, would resolve cases arising between members of the English nation overseas.⁶⁵ A few years later, in 1663, Charles Henshaw, the English consul at Genoa, lamented the limits of his authority when he complained that Genoese courts adjudicated legal cases between English mariners and masters, cases which "doth belong to the english Consull in which indeed my pattent from his majesty is much defficient itt

⁶⁴ Coventry to Finch, 18/28 March 1677, BL: Add. MS 25121, f. 82v-83r. The Levant Company's charter of 1661 condemned English subjects who appealed to Ottoman courts in defiance of their consuls and ambassadors, see Goffman, *Britons in the Ottoman Empire*, 204.

⁶⁵ Bland, *Trade revived*, 35.

giveinge me but rather the authority of a solicitor for the Nation than a Consull.”⁶⁶ In fact, French consuls possessed a delegated jurisdictional authority at Genoa, where their decisions in cases between French subjects could be appealed to Genoese magistrates.⁶⁷ The jurisdictional authority of consuls also found confirmation in some of England’s commercial treaties. An article of the Treaty of Madrid of 1667 between England and Spain thus directed merchants, mariners and ships’ masters to take any case that should arise among them to their nation’s consul for arbitration or to the courts of the state to which they were subject.⁶⁸

With the growth of state power in the seventeenth century, consular and extraterritorial jurisdiction shifted from being a matter of communal self-government to a means to extend state laws and authority to overseas subjects.⁶⁹ The English resident to Tuscany, John Finch, objected to the sums that English merchants at Livorno expended in pursuit of lawsuits against one another. While he lamented the factionalism of the English factory, he particularly blamed the organization of Tuscan courts for the legal difficulties of English merchants, since parties were able to draw out cases indefinitely through

⁶⁶ Charles Henshaw, Genoa, 27 October/6 November 1663, TNA SP 79/1, f. 173r. The Dutch diplomat Abraham de Wicquefort specifically noted that it was the responsibility of consuls to act as “juge des differends, qui peuvent naistre entre ceux de leur nation,” *L’ambassadeur et ses fonctions* (La Haye, 1681), pt. 1, 133. The consul for the English nation at Genoa appointed in 1635, Filippo Bernardi, possessed jurisdiction over intranational cases, but his successors were not granted this authority until the early eighteenth century, see Grendi, “Gli inglesi a Genova,” 267.

⁶⁷ On the nature of French consular authority at Genoa, see Grendi, “Gli inglesi a Genova,” 268

⁶⁸ See Article XIX of the Treaty of Madrid, as reproduced in George Chalmers, ed., *A Collection of Treaties between Great Britain and other Powers* (London, 1790), 2: 16. John Finch cited this article in his efforts to convince the Grand Duke of Tuscany to accept the jurisdictional authority of the English consul at Livorno, see Finch’s memorial to the Grand Duke, 4 February 1671, TNA SP 98/12, f. 192v.

⁶⁹ Cf. van den Boogert, “Consular jurisdiction in the Ottoman legal system,” 623-625.

repeated appeals.⁷⁰ In response to the apparent inefficiency of Tuscan courts, Finch urged that English subjects be required to bring their disputes to “some of their own Nation,” with the possibility of appeal to England, such that “his Majesties Subjects might be governd by his Majesties Laws so advantagiously to the Interest of the King and the Partyes Concernd.”⁷¹ Merchants appear to have doubted whether they would receive more equitable justice from their own representatives than from local courts.⁷² Indeed, it is possible that merchants found the expedited procedures of the law merchant, which was administered in courts at Livorno and Pisa, to be preferable for commercial purposes to English common law.⁷³

Finch’s desire to turn merchants away from local courts seems to have reflected the growing conviction among officials and jurists that English law was not only distinct from that practiced elsewhere in Europe, but also superior.⁷⁴ He thus sought to substitute

⁷⁰ On the workings of Tuscan courts within the wider context of early modern justice, see Trivellato, *The Familiarity of Strangers*, 158-159. Foreigners in England equally complained of the propensity of parties to move their cases between courts, slowing the pace of justice, see de Luca, “Beyond the Sea: Extraterritorial Jurisdiction and English law,” 134-135.

⁷¹ Finch to Arlington, Florence, 4/14 July 1665, TNA SP 98/6. There is no evidence to confirm that Finch borrowed Bland’s suggestions for resolving differences between English subjects without recourse to local courts, but the similarity of the proposals suggests that Finch adopted Bland’s ideas for addressing intra-factory disputes.

⁷² The prospect that Finch might become “umpire” of disputes within the English nation was not pleasing to the merchant Thomas Dethick or other members of the nation, who replied “that it would bee requisite then that hee kept a Judge Advocate otherwise it would seeme an arbitrary power; not but that a reference in most difference may be best, but that the generallitie desired to be governed by knowne lawes wherby every man might know how to containe himselfe,” Thomas Dethick to Joseph Williamson, Livorno, 7/17 July 1665, TNA SP 98/6.

⁷³ On seventeenth-century calls for the reintroduction of courts in England that ruled according to the procedures of the law merchants, see de Luca, “Beyond the sea: extraterritorial jurisdiction and English law,” 66-69. On the administration of the law merchants in early-modern Tuscany, see Trivellato, *The Familiarity of Strangers*, 158-159.

⁷⁴ Conceptions of the distinctiveness of English law particularly rested on the dominance of common law. For a summary of the ideological significance of common law in early modern England and of the problems of associating English law with common law alone, see de Luca, “Beyond the sea: extraterritorial

English legal authority for that of local courts in cases between English subjects in Italian ports. In the process, he also aimed to establish the English as a distinct national and legal community within those cities. While negotiating a commercial treaty with Savoy, Finch advised his superiors that he thought the treaty should specify that all disputes between Englishmen should “not be admitted into theyr Courts” and should instead be settled by representatives chosen by the merchants and the consul and the “Prince be obliged to assist them with his Coercive power, for the Execution of the sentence.” The sentence would then stand until confirmed in England.⁷⁵ This proposal apparently had the support of the Council of Trade, which submitted a petition that insisted on “Exempting the English from the Law of that Country.”⁷⁶ According to Finch, “This Proposition will not be strange to any Prince in Italy, they all allowing the Jews a particular Government within themselves.”⁷⁷ In fact, the only Jewish community in Italy that possessed the right to adjudicate intra-communal disputes was that at Livorno. Nevertheless, Finch appears to have seen the largely self-governing Jewish nation at Livorno as a model for the organization of English factories in Italy. The communal courts of the Jewish nation at

jurisdiction and English law,” pp. 36-52. Finch did not specify to which courts he intended merchants to appeal in England, but it seems probable that Finch was not thinking of the common law alone when he referred to “his Majesties Laws,” since commercial litigation in England took place in the Court of Chancery, which was a court of equity, as well as the common law courts of the King's Bench and Common Pleas. Commercial litigation in early modern England has received relatively little scholarly attention, but see Christine Churches, “Business at Law: Retrieving Commercial Disputes from Eighteenth-Century Chancery,” *The Historical Journal* 43, no. 4 (December 2000): 937-954.

⁷⁵ The Treaty of Florence between England and Savoy ultimately established a judge delegate to hear cases involving English subjects, Finch to Arlington, Florence 28 July/7 August 1668, TNA SP 98/9, f. 254r.

⁷⁶ Finch to Arlington, Florence, 17/27 August 1669, TNA SP 98/10, f. 303r. This petition does not appear to have survived and does not appear among the surviving documents of the Council regarding the Treaty of Florence in “Propositions concerning the trade of Savoy, with the Report of the Councell of Trade,” 20 January 1669, TNA SP 388/1, f. 65r-66v.

⁷⁷ Finch to Arlington, Florence 23 June/3 July 1668, TNA SP 98/9, f. 229v-230r; Trivellato, *The Familiarity of Strangers*, 76.

Livorno gave the legal order of the city a composite character that Finch sought to extend to the English merchant community.

The growth of English trade in the Mediterranean spawned legal cases that spanned jurisdictional boundaries and complicated the relationship between territorial sovereignty and jurisdictional authority. Sailors and merchants turned to foreign courts to dispute contracts signed in English cities and lawsuits expanded to include distant parties and transactions. Consequently, and despite Finch's proposals, English law and English courts were not the only legal reference points for English merchants around the Mediterranean. A long-running dispute between English merchants at Livorno illustrated how merchants crossed jurisdictional and state boundaries in their pursuit of justice and favorable verdicts.⁷⁸ A year before Clutterbuck came to Slaughter Lee's aid in the case of Francesco Mendes, the two had been locked in a series of contentious lawsuits. In 1669, John Finch reported that Clutterbuck brought a case in Tuscany against Lee, after Lee and another merchant sued Clutterbuck in England over a sum previously awarded him by a Florentine court regarding some goods at Livorno.⁷⁹ Lee was ordered to renounce the case he had brought against Clutterbuck in England and to instead bring it before the *Consoli del Mare* at Pisa. Moreover, Lee would be held responsible for any damages that Clutterbuck might be ordered to pay in England.⁸⁰

⁷⁸ For a good summary of the complex structure of the overlapping jurisdictions of Tuscan courts, see Trivellato, *The Familiarity of Strangers*, 158-162.

⁷⁹ Finch to Arlington, May 18/28 1669, TNA SP 98/10, f. 191r-192r; Finch to Arlington, Florence, 6 August 1669, TNA SP 98/10, f. 269r-271r.

⁸⁰ Finch to Arlington, Florence, 24 August/3 September 1669, TNA SP 98/10, f. 309r; Finch to Arlington, Florence, 30 August 1669, TNA SP 98/10, f. 311r. An English copy of the sentence of the *Consoli di Mare*, dated 18/28 August 1669, may be found at TNA SP 98/10, f. 304r-v.

Finch objected to Tuscan tribunals denying English subjects recourse to their nation's courts and argued that the case should be left to English justice because it involved English subjects alone and had already been heard by English courts. According to Finch, "to allow the President for the G. Duke to react upon his Majesties Subjects at Legorn, what his Majesty acts upon them by the Law of England, was to admitt the G. Duke to an equality of Jurisdiction."⁸¹ For Finch, the relationship between sovereign and subject took precedence over the jurisdictional claims of foreign courts. In a memorial to the Grand Duke, Ferdinand II, regarding the case, Finch stated that "in cases that will arise between Subject and Subject of His Majesty the King, My Lord with just reason would sooner pretend to give laws to others Princes, than to receive any from them."⁸² The case between Clutterbuck and Lee also further affirmed Finch in his belief that English courts and representatives ought to have jurisdiction over cases arising between subjects overseas.⁸³

The Tuscan government was, however, as jealous of the territorial jurisdiction of its courts as English representatives were of the Crown's authority over its overseas subjects. According to Tuscan ministers, the dispute between Lee and Clutterbuck fell under Tuscan jurisdiction since it had originated at Livorno and in Florentine courts, even if it had proceeded to unfold further in England. The jurist and official Ferrante Capponi explained to Finch, "His Highnesse had immutably resolv'd never to deny the Execution

⁸¹ Finch to Arlington, Florence, 27 July/6 August 1669, TNA SP 98/10, f. 270r-v.

⁸² "...e nelli casi verreno frà Suddito e Suddito della M. S. il Re, Mio Signore con giusta ragione pretenderebbe più tosto di dar leggi a gl'altri Principi, che di riceverne alcuna de essi," Memorial of Sir John Finch to the Grand Duke of Tuscany, 29 August 1669, TNA SP 98/10, f. 434v.

⁸³ Finch to Arlington, Florence, 17/27 August 1669, TNA SP 98/10, f. 303r.

of any Sentence given in his Tribunals, That his Majesty could not take any cognisance of what was done here, so as to hinder the proceeding.”⁸⁴ Underlying Capponi’s insistence that Tuscan courts had the right to adjudicate cases brought to them by English subjects at Livorno was the fact that jurisdictional authority was central to early modern sovereignty; according to Capponi, jurisdiction was “the essential part of a Prince.”⁸⁵ Indeed, Capponi’s defense of Tuscan jurisdiction over English subjects mirrored his efforts to preserve or balance the sovereignty of the Grand Duke of Tuscany with Papal authority.⁸⁶ The jurisdictional contest created by the case between Clutterbuck and Lee similarly set Tuscan sovereignty against the extraterritorial authority of the English Crown.⁸⁷ When Capponi tried to persuade Finch that the English king had less cause to be concerned for his jurisdiction than a minor prince, the English resident instead asserted, “it Became Great Princes to be as Jealous of their Jurisdiction and they could best maintain it and certainly this was a piece of his Majesties Jurisdiction to distribute laws to his Own Subjects, and not to expose them though they were in England, to a necessary of being try’d by forreign Tribunalls.”⁸⁸ Despite Finch’s request that Ferdinando II prorogue the sentence of his court while the Privy Council considered the

⁸⁴ Finch to Arlington, Florence, 7/17 December 1669, TNA SP 98/10, f. 436r.

⁸⁵ Finch to Arlington, Florence, 7/17 December 1669, TNA SP 98/10, f. 436v.

⁸⁶ Francesco Martelli, “ ‘Nec Spes Metus’: Ferrante Capponi, giurista et alto funzionario nella Toscana di Cosimo III,” ed. Franco Angiolini, Vieri Becagli, and Marcello Verga *La Toscana nell’età di Cosimo III* (Florence: EDIFIR, 1993), 158-160.

⁸⁷ “...upon which hearing me tell thim that Both Princes stood upon the same point of Jurisdiction according to his reppresenting the Case which was a point I allwayes desire'd to have avoided and not to Engage our Masters: He reply'd Now Both Princes were Pawn'd, and time would show which was mistaken,” Finch to Arlington, Florence, 7/17 December 1669, TNA SP 98/10, f. 436v.

⁸⁸ Finch to Arlington, Florence, 14/24 December 1669, TNA SP 98/10, f. 442r.

matter, the Grand Duke refused to acknowledge any English legal intervention in the case.⁸⁹

Arguments for extraterritorial jurisdiction centered as much on the extension of English law into the Mediterranean as they did on preserving the authority of English courts. Consequently, these jurisdictional debates reflected the intersection of different legal traditions that accompanied the expansion of northern European trade into the Mediterranean basin.⁹⁰ In early 1671, following his efforts to remove cases between English subjects from the jurisdiction of Italian courts, Finch similarly requested that Tuscan courts refrain from hearing cases between English masters and mariners. Finch again emphasized that the Crown sought only to intervene in matters that were “between Subject and Subject,” but he also argued that Tuscan decisions regarding maritime matters were inconsistent with those made in England and disadvantageous to English navigation. Finch warned that if Tuscan courts continued to hear maritime cases between English subjects, the king could not “deny His own Subjects the benefitt of His owne Lawes” and the rulings of English courts would invalidate those of their Italian counterparts.⁹¹

Underlying Finch’s efforts to remove these maritime issues from Tuscan courts were differences in legal and maritime practice between Mediterranean and northern European countries. English and Italian courts differed in the determination of *average*,

⁸⁹ Finch to Arlington, Florence, 14/24 December 1669, TNA SP 98/10, f. 443r.

⁹⁰ Finch's memorial to the Grand Duke regarding the case of Lee and Clutterbuck specifically noted that English subjects were born under different laws than those that were administered in Tuscany and were obligated to obey their native laws, “Memorial of Sir John Finch to the Grand Duke of Tuscany,” 29 August 1669, TNA SP 98/10, f. 433v.

⁹¹ Finch to Arlington, Florence, January 10/20 and January 17/27 1671, TNA SP 98/12, f. 169v, 178v-179r.

or the apportionment of losses suffered in the transportation of goods by ships among the various merchants who had freighted a single vessel.⁹² If part of the cargo carried on board a ship had to be jettisoned in order to save the ship on account of a storm or other problem at sea, maritime law held that the owners of the surviving cargo were obligated to compensate those whose goods were lost. Similarly, merchants could be required to pay unexpected but unavoidable expenses incurred by ships' masters and crews in the course of voyages. English courts limited the size of *averages* far more sharply than their Italian counterparts. Consequently, merchants sought to restrict the determination of *average* to English courts, while masters were happy to turn to Italian courts. Similarly, northern European maritime customs differed from those prevalent in the Mediterranean. While Mediterranean mariners were paid on a monthly basis, English sailors instead signed on for full voyages.⁹³ English mariners would turn to Italian courts to demand their wages, potentially leaving their ship without an adequate crew to continue its voyage.

The adjudication of maritime disputes between masters and mariners was a source of contention throughout Italian ports during the reign of Charles II. Tuscan ministers rejected requests that their courts refrain from hearing cases involving English mariners as injurious to Tuscan jurisdiction and to the trade of Livorno. Since English jurisdiction would extend only over subjects of that nation, while ships carried cargo and mariners

⁹² "My Memoriall to the Great Duke for the Leaving His Majesties Subjects amongst themselves in Maritime Causes to the Laws of England," Florence, 25 January/4 February 1671, TNA SP 98/12, f. 192v-193r; Memorial to the English resident at Florence, 2 May 1671, ASF Mediceo del Principato, 1824, #24. On the place of "averages" in early-modern commercial and maritime law, see Molloy, *De Jure Maritimo et Navali*, 232-238 and Beawes, *Lex Mercatoria Rediviva*, 122-124.

⁹³ Grendi, "Gli inglesi a Genova," 267.

pertaining to different nations, cases would potentially have to be heard in multiple courts, under different laws. The resulting commercial and legal complexity would drive ships away from Livorno.⁹⁴ Despite the practical difficulties associated with the extraterritorial application of English laws, England's resident at Venice, John Doddington, also criticized Venetian courts for intervening in wage disputes between English sailors and masters and absolving sailors of their service contracts.⁹⁵ Similarly, the English consuls at Genoa complained that Genoese courts regularly heard cases between mariners and their masters. In April 1677, Charles II wrote to the government of Genoa to complain that the officers of the city's Admiralty had taken cognizance of a dispute between the master and mariners of an English ship and to request that, for the future, Genoese magistrates leave such cases to the English consul at that port.⁹⁶

In response, the Chancellor of the Genoese government maintained that the *Consoli del Mare* had always shown a due regard to English navigation, but also asserted that the court had always possessed "a power of hearing & determining marine affaires."⁹⁷ Carlo Ottone, the Genoese consul in London, similarly defended his government's position by arguing, "Consuls have never had in the Cittys of Italy the

⁹⁴ Memorial to the English resident at Florence, 2 May 1671, ASF Mediceo del Principato 1824, #24.

⁹⁵ "English Memorial presented by Mr. Dodington to the College of Venice," 10 December 1670, TNA SP 79/2.

⁹⁶ Italian and English copies of the mariners' petition against the master to the Genoese magistrates, dated Genoa, 30 June 1677, may be found in Longleat House, Coventry Papers, vol. 55, f. 51r-52r and 53r-54r, respectively. See also, Legatt to John Cooke, Genoa, 14 July 1677, Longleat House, Coventry Papers, vol. 55, f. 55r-v.

⁹⁷ Translation of the letter from Felix Tassorellus to Charles II, Genoa, 25 June 1677, Coventry Papers, vol. 55, f. 49r-v. The Latin original is located at f. 47r-v.

authority of Judges.”⁹⁸ Instead, he asserted that “The Court of Admiralty alone hath always been Judges of all controversys not onely between those of the place, but forainers also.”⁹⁹ The arguments made by the Genoese government and Ottone ultimately convinced Charles and his ministers to surrender their jurisdictional claim over English mariners and masters.¹⁰⁰ Moreover, the Genoese rejection of English consular jurisdiction also seems to have brought an end to efforts to establish the extraterritorial legal authority of English representatives in Italian ports. Finch’s successor as resident at Florence, Thomas Dereham, advised Sir Leoline Jenkins in 1682 that he had “one small Negotiation more on foot,” that being to deny English sailors access to Tuscan courts for settling disputes with their captains, such that they would instead have to take their cases to England “where their customes and agreements are better understood.”¹⁰¹ However, the Tuscan envoy to London, Francesco Terriesi, reported that he had heard no word of these claims from the English ministers and instead noted that the Genoese consul had earlier quashed such claims, “representing to them the absurdity of the pretention.”¹⁰²

⁹⁸ “L'autorità di Giudice nelle Città d'Italia li Consoli non l'hanno mai havuta,” *ibid.*, f. 62v; I use the contemporary English translation in, *ibid.*, f. 64v. The Genoese consul at Livorno, Giovanni Domenico Gavi, affirmed that consuls in that port possessed jurisdiction over neither civil nor criminal cases between members of their nations, for which foreign merchants turned instead to the tribunal of the governor of Livorno; maritime cases were heard by the *Consoli del Mare* at Pisa. Consuls were even forbidden from establishing chancellories to handle legal documents, Gavi to the Serenissimi Collegi, Livorno, 2 June 1677, ASG Giunta del Traffico 4.

⁹⁹ “Il Solo Tribunale dell'Armiraletà è sempre stato il giudice di tutte le controversie non solo fra Cittadini come tra forastieri,” Ottone to Charles II, London, 3 August 1677, Longleat House, Coventry Papers, vol. 55, f. 62v. The translation here comes from the contemporary English translation, f. 64v.

¹⁰⁰ Carlo Ottone, London, 27 August/6 September 1677, ASG Lettere Consoli 2629, mazzo 2.

¹⁰¹ Dereham to Jenkins, Florence, 8 December 1682, TNA SP 98/16.

¹⁰² Terriesi to Panciatichi, London, 30 April/10 May, 1683, ASF Mediceo del Principato, 4212.

The rejection of English extraterritorial jurisdiction in Italian port-cities confirmed that English merchants in the western Mediterranean would fall fully under the sovereignty of Italian princes and the authority of Italian laws. Early in the eighteenth century, some members of the factory at Livorno complained to the Commissioners for Trade and the Plantations that the *consolati del mare* of the Italian states favored ships' masters and crews over merchants and recommend that cases between English merchants and masters be heard by English courts alone.¹⁰³ However, Robert Balle, a merchant who had formerly resided at Livorno, advised that it was best not to interfere with the established workings of the Tuscan courts, which operated "in the fairest way, by a Court of Merchants, according to the old Law of Barcellona, agreed to long since, & now observed by all the severall Princes & States, who have any Trade in the Mediterranean as you must know, to desire an alteration of them unlesse all againe agreed to itt would be unreasonable to be asked."¹⁰⁴ According to Balle, English merchants trading to the Mediterranean thus had to conform to the legal and commercial traditions of that sea.

The Crown's attempts to establish the jurisdiction of English consuls and courts over merchants in Mediterranean ports represented its most extensive effort to project its authority over English subjects into foreign ports. Nevertheless, these attempts largely failed as Italian governments guarded the jurisdiction of their own courts. The inability of

¹⁰³ "Memorial from the Merchants Trading to Leghorn, Genoa, and Sicily, containing an Account of the State of Trade in those parts," received on 4 April 1712, TNA CO 388/16, #67.

¹⁰⁴ Robert Balle to Sir William Popple, Kensington, 4 December 1711, TNA CO 388/15, f. 75r. Balle here refers to the *Consolato del Mare*, a compilation of maritime customs from the Mediterranean and southern Europe that was first published in Barcelona in the fifteenth century. For brief discussions of the *Consolato*, see Henry Wager Halleck, *Halleck's International Law, or, Rules Regulating the Intercourse of States in Peace and War*, 3rd ed., 2 vols. (London: Kegan Paul, Trench, Trübner, 1893), 1:10; Carl J. Kulsrud, *Maritime Neutrality to 1780* (Boston: Little, Brown, and Company, 1936), 14-15.

the Crown to establish its extraterritorial jurisdiction over merchant factories thus revealed the gradual assimilation of territorial and jurisdictional sovereignties in early modern Europe. Consequently, Italian princes refused to cede jurisdiction over foreign merchants living within their ports even as the Ottoman Empire delegated jurisdictional authority over European merchants to their consular representatives. The relative autonomy of the Jewish nation at Livorno and ecclesiastical immunities highlighted the degree to which jurisdictional authority in Italian states was also layered and composite. Even so, the determination of Italian governments to sustain their authority over foreign merchants distinguished the status of merchants in Italian cities from that of factory communities in Levantine or Indian Ocean ports.

III. *The Plowman Controversy and the English Factory at Livorno*

Despite the inability of English representatives to secure the jurisdiction of English courts over subjects in Mediterranean ports, their attempts to assert greater state control over English merchants nevertheless reflected a broader process whereby state and subject identity became increasingly important for the organization of trade in the Mediterranean.¹⁰⁵ Although English merchants were quick to call upon their government to advance their interests in foreign ports, the English state was not the only point of legal and sovereign reference for merchants who were highly integrated into the political and legal environments of their host cities.¹⁰⁶ A fierce contest that erupted early in the

¹⁰⁵ On the position of the state in the seventeenth-century Mediterranean, see Molly Greene, “Beyond the Northern Invasion,” *passim*.

¹⁰⁶ For vivid examples of English merchants turning to foreign authorities in pursuit of their own political and legal interests, see Goffman, *Britons in the Ottoman Empire*, *passim*.

eighteenth century between the English envoy to Tuscany, Sir Lambert Blackwell, and the factory at Livorno over the arrest and prosecution of an English privateer highlighted the limited control of the English state over its subjects in that port.¹⁰⁷ English ministers demanded that the Grand Duke, Cosimo III, compensate the English privateer William Plowman for the sums he was forced to pay to secure his release. However, when Blackwell directed the English factory to prepare to leave the port of Livorno, they refused and instead attacked Blackwell for the way in which he had advanced Plowman's claims against the Grand Duke. The resulting rivalry between Blackwell and English merchants at Livorno suggests how the politics of merchant factories shaped the organization of early modern commerce. As merchants navigated between their allegiance to England and the sovereignty of local rulers, they contributed to the territorialization of state legal authority in western Europe.

As the power and influence of the Crown extended into the Mediterranean, state diplomacy increasingly intersected and overlapped relations between local governments and English factories. The case of William Plowman and the diplomatic crisis that followed it highlight the changing political and legal environment of the western Mediterranean. In 1696, Plowman, an English merchant but naturalized Tuscan subject, was arrested by Tuscan officers on his return from a privateering cruise, for which he had outfitted a vessel at Livorno in violation of the neutrality of that port and in spite of a promise to the Grand Duke to refrain from attacking French shipping.¹⁰⁸ He was then

¹⁰⁷ For a summary of this affair, see June Palmer, "Letters from London to Leghorn, 1704-1705. The Correspondence between Arthur Martyn and Francis Arundell," *Nuovi studi livornesi* 14 (2007): 59-61.

¹⁰⁸ Giacomo Giusti, "Il Granducato di Toscana e il 'caso Plowman': la difesa della neutralità e la crisi con l'Inghilterra (1696-1707)" (Tesi di Laurea Specialistica, Università degli Studi di Pisa, 2008), 35-51; *The Case of Sir Alexander Rigby, William Shepard, and William Plowman: Setting forth the Damages they have*

imprisoned in Florence until he made good the losses sustained by the French, who held the Grand Duke responsible for Plowman's attacks on French ships. English jurists and ministers defended Plowman and argued that the Grand Duke did not have jurisdiction over English privateers.¹⁰⁹ According to English officials, the Grand Duke lacked the authority to deny English subjects the right to combat enemies and had acted unjustly towards Plowman by standing simultaneously as plaintiff, prosecutor and judge in the case.¹¹⁰ The case became more complicated and legally controversial when Plowman's former business partners, Sir Alexander Rigby and William Shepard, went bankrupt after goods they purported to own were seized as part of Plowman's payment of compensation to the Grand Duke.¹¹¹ All three merchants subsequently lobbied the English government to condemn the Tuscan proceedings against Plowman and to force Cosimo to compensate them for their losses. Their efforts began to bear fruit in 1702, when Blackwell informed the Grand Duke that the newly enthroned Queen Anne viewed the damages sustained by Plowman, Rigby and Shepard to be a matter of public and national concern.¹¹² Over the next two years, Blackwell pressed Tuscan ministers repeatedly for compensation for Plowman and his associates.

Suffer'd by the Imprisonment of William Plowman; Seizure of their Effects, and other Proceedings of the Grand Duke of Tuscany (London, 1701), 7.

¹⁰⁹ Charles Hedges, "Report concerning Mr. Plowman, to the Lords Justices," 17 or 24 July 1699, BL Add. MS 25098, f. 174v.

¹¹⁰ *The Case of Sir Alexander Rigby, and William Shepard, Complainants, As to their Particular Damages by the Great Duke of Tuscany's Proceedings in the Seizure of William Plowman, and of their Effects* (London, 1704), 5-6.

¹¹¹ *Ibid.*, 9.

¹¹² Giusti, "Il Granducato di Toscana e il 'caso Plowman,'" 67.

In response to English demands for compensation, the Tuscan government argued that the prosecution of Plowman was a matter of the Grand Duke's jurisdictional and sovereign authority. Tuscan ministers never cited Plowman's Tuscan subjecthood in their arguments for Cosimo's right to punish the merchant, probably in order to avoid lending strength to French arguments that the Grand Duke was responsible for the losses they had sustained at Plowman's hands.¹¹³ Instead, they explained that the Grand Duke had prosecuted Plowman for the "breach of faith," by which he broke his oath to a sovereign prince and violated Tuscan neutrality by arming a ship in Livorno.¹¹⁴ According to Tuscan officials, Plowman had committed a crime of *laesa maiestas* by violating the honor of the Grand Duke.¹¹⁵ They further denied English arguments that the Grand Duke had acted in an arbitrary manner in his prosecution of Plowman. Instead, Tuscan officials argued that the Grand Duke had proceeded against Plowman according to the laws of Tuscany.¹¹⁶ The Tuscan envoy to London, Giacomo Giraldi, rejected suggestions that the prosecution of Plowman had somehow violated the norms of English justice when he pointed out "that Laws are fixed in their Countries, and do not follow the

¹¹³ Giusti, "Il Granducato di Toscana e il 'caso Plowman'," 49. Tuscan ministers professed to be unable to find any evidence of Plowman's Tuscan subjecthood, see Giraldi to Panciatechi, London, 25 Aug. 1702, BL MS Eg. 1696, f. 232r; Panciatechi to Giraldi, Florence, 23 September 1702, ASF Mediceo del Principato, 4125.

¹¹⁴ A copy of the Duke's sentence against Plowman with an English translation is given in the pamphlet authored by Plowman's opponents within the English factor at Livorno, *The Answer of the Merchants-Petitioners, and Trustees for the Factory at Legorn, to the Account of Damages, Laid to the Charge of the Grand Duke of Tuscany by Sir Alexander Rigby, Mr. Will. Shepard, and Mr. Will. Plowman* (London, 1704), 140-144. See also Giusti, "Il Granducato di Toscana e il 'caso Plowman'," 44-46, 51-57.

¹¹⁵ For this point, see the memorial of Ruberto Maria Zefferini, the Grand Duke's special envoy to London, of 29 March 1705, SP TNA 100/29, which was printed as *The Grand Duke of Tuscany's Proceedings against William Plowman: with Remarks thereupon* (London, 1705), 10-11.

¹¹⁶ The Tuscan attorney Alessandro Luigi Catelani stressed this point in a defense of the Grand Duke's behavior towards Plowman, see "Relazione di Catelani su Plowman," Livorno, 19 March 1704, ASF Mediceo del Principato, 1619.

Countrymen.”¹¹⁷ The Tuscan envoy to England, the Conte Zefferini, later echoed this point when he defended the Grand Duke’s judgment against Plowman by noting, “Since an English Man residing in Florence must be Tried by, and is subject to the Laws of Florence, as much, as a Florentine residing in England is subject to the Laws of England.”¹¹⁸

Underlying the rivalry between Blackwell and members of the English merchant community at Livorno were different conceptions of the proper relationship between merchant factories and the state. As the English government and its ministers pressed strenuously for restitution of Plowman’s losses, the English merchants at Livorno defended the Grand Duke’s conduct towards the unfortunate merchant. Despite the official view of English ministers that the case of Plowman was “a National concern,” members of the factory feared that the defense of Plowman would endanger their commercial position.¹¹⁹ They particularly blamed Blackwell for having pressed Plowman’s case too far and accused him of keeping them in the dark as to the state of the affair. As Tuscan ministers became increasingly frustrated with Blackwell’s inflexible attitude towards the Plowman affair, English merchant sought to distance themselves from the envoy.¹²⁰ During a visit of the Grand Duke to Livorno in March 1704, a group of these merchants enraged Blackwell by refusing to accompany him to an audience and

¹¹⁷ Giraldi to Panciatechi, London, 25 April 1704 and Panciatechi to Giraldi, Livorno, 7 March 1704, ASF Mediceo del Principato, 4216.

¹¹⁸ Memorial of Conte Zefferini, London, 29 March 1705, TNA SP 100/29.

¹¹⁹ Blackwell to Nottingham, Pisa, 2 March 1703, TNA SP 98/20.

¹²⁰ For a sense of Tuscan opinions of Blackwell's conduct in the negotiations surrounding Plowman's case, see Giraldi to Panciatechi, London, 9 October 1703, 1 August 1704, 17 October 1704, BL MS Eg. 1697, f. 82v-83r, 178r, 196r-v. On Blackwell's strained relations with both the English factory at Livorno and with the Tuscan government, see also Villani, “I consoli della nazione inglese a Livorno,” 33, n. 114.

by instead meeting with Cosimo separately in order to inform him of their efforts to oppose Plowman's pretensions. Blackwell strongly disapproved of this display of "disrespect" and condemned several of the merchants at Livorno for spreading dissension through the factory. Blackwell echoed the complaints of his predecessors when he wrote, "the Merchants ought as good subjects to vulture their duty to her Majestie more then their own private Interests," and to leave the Queen to order what she thought best.¹²¹ Like Finch and other diplomats around the Mediterranean, Blackwell thought that merchants were in no position to make effective judgments regarding matters of state and should thus observe the leadership of the Crown's representatives.

Conversely, the merchants at Livorno distinguished the commercial character of the factory from Blackwell's political position. The merchants explained that they did not believe their refusal to accompany Blackwell to his audience with the Grand Duke impacted his character as the representative of the Queen.¹²² Instead, the members of the factory emphasized that they were obedient subjects but explained that they saw the factory as a body that was in no way connected to the state's diplomatic representative at Livorno. The merchants gave form to this understanding of the factory as a distinct commercial association when they organized to refute Plowman's case and to defend Cosimo III's prosecution of Plowman. Four merchants began to serve as the nation's

¹²¹ Blackwell to Nottingham, Livorno, 3 March 1704, TNA SP 98/21. For the merchants' own account of their refusal to accompany Blackwell to his audience, see their reports of 2 March 1704 and 3 March 1704, which accompanied a letter from the Deputies of the factory to Robert Balle, Edward Gould, Robert Western, and Ralph Lee, Livorno, 5 March 1704, TNA SP 98/21.

¹²² The merchants' account of their proceedings is contained in a paper dated 2 March 1704, contained in a letter from Francis Arundell, Thomas Balle, Edward Nelthorpe and John Horsey to Robert Balle, Edward Gould, Robert Western and Ralph Lee, Livorno, 5 March 1704, TNA SP 98/21.

deputies at Livorno and four other merchants acted as its trustees in London.¹²³ Although it is unclear whether the deputies acted of their own accord or were selected by their fellow merchants, these merchants presented themselves as the representatives of the factory and appear to have spoken for the majority of the members of the factory. The deputies at Livorno noted that they recorded their transactions in the “National journal,” which suggests that they acted on behalf of the factory.¹²⁴ Moreover, to support the cost of publishing a pamphlet directed against Plowman, the deputies of the nation at Livorno began to collect a small fee from all cargo brought into that port on English vessels, with the connivance of Tuscan officials.¹²⁵ Francesco Terriesi, the supervisor of the customs at Livorno and former Tuscan resident to London, also made sure that the merchants at Livorno were informed of the latest dispatches from Tuscan diplomats in London and provided them with documents and his personal assistance to produce the pamphlet directed against Plowman.¹²⁶

Blackwell and the representatives of the English factory at Livorno articulated contrasting models for the organization of English merchant factories. In theory, diplomats, consuls and factories worked harmoniously to secure and advance trade to different ports. Conversely, tensions between Blackwell and the merchants at Livorno

¹²³ The deputies were Francis Arundell, Thomas Balle, Edward Nelthorpe and John Horsey and the trustees in London were Robert Balle, Edward Gould, Robert Western and Ralph Lee.

¹²⁴ See the letter of the factory’s deputies to trustees, Livorno, 5 March 1704, TNA SP 98/21. The journals of the English factory at Livorno have not survived.

¹²⁵ *The Answer of the Merchants-Petitioners, and Trustees for the Factory at Legorn, to the Account of Damages, Laid to the Charge of the Grand Duke of Tuscany by Sir Alexander Rigby, Mr. Will. Shepard, and Mr. Will. Plowman...*, (London, 1704). This work was credited to John Horsey, as recorded in an anonymous message in Blackwell’s handwriting, dated 5 February 1704 in TNA SP 98/21. See also Blackwell to Hedges, Florence, 5 July 1704, TNA SP 98/21.

¹²⁶ Terriesi to Panciatechi, Livorno, 19 May 1704, ASF Mediceo del Principato 2674.

called into question the degree to which factories were distinct institutional bodies. An anonymous memorial, which may have been authored by Blackwell, thus contrasted the independent behavior of the English nation at Livorno with its supposedly traditional subservience to England's "publick Ministers." The author of this document specified that the factory at Livorno had not received any "Letters patent" from England or "any particular priveledges[sic] to make them a Company" from the Grand Duke. Instead, the merchants relied on the leadership of English envoys or consuls both in their internal deliberations and in their interactions with Tuscan officials. The factory thus lacked any corporate basis to act independently and was instead wholly dependant on England's diplomatic officers; consequently, in the negotiation that led to a convention for guaranteeing the neutrality of Livorno in 1692, "the Consul proceeded by Orders from his Sovereign, and not by the irregular sentiments of his Countrymen resideing at Leghorn." The author condemned the behavior of the factory at Livorno and, in particular, the merchants' imposition of a duty to fund the costs of their campaign against Plowman, noting that the factory had "no Law, Authority, nor precedent for such a tax."¹²⁷

The political and legal controversy that followed the actions of Plowman came to a head in March of 1704, when Blackwell received orders to demand reparations from the Grand Duke for the damages suffered by Plowman and his colleagues and, if Cosimo should refuse that demand, to direct the English merchants to wind up their affairs and withdraw from Livorno.¹²⁸ Meanwhile merchants in London wrote their partners and

¹²⁷ "The usuall Methods & present proceedings of the Factory at Leghorne," TNA SP 98/21.

¹²⁸ Blackwell to Nottingham, Pisa, 25 March 1704, TNA SP 98/21. A copy of Nottingham's letter of 8 February 1704 to Blackwell containing instructions to demand compensation from the Grand Duke and to instruct the factory to prepare to leave Livorno is contained in TNA SP 98/21.

correspondents at Livorno to warn them that if the Grand Duke did not pay compensation, “the Cittye of Legorne must be Bombed.”¹²⁹ Although rumors of military action against Livorno appear to have been unfounded, they nevertheless reflected worries as to how far the English government would go in support of Plowman. In May of that year, when the Tuscan government continued to refuse to compensate Plowman, Blackwell advised the members of the factory that they should wind up their affairs and withdraw from Livorno as quickly as possible.¹³⁰

Members of the factory responded to Blackwell’s intimation by stating that they saw no reason to leave Livorno and emphasizing the impossibility of such a move. According to one merchant, Samuel Lambert, “they reckon’d themselves as safe att Legorne as att Whitehall.” Another thanked Blackwell for his intimation, but protested that “’twas as easy for them to fly as remove their Effects from this place” and yet another objected that the factory “should be expos’d for such a Man as Plowman.”¹³¹ The merchants also wrote to the Grand Duke to inform him of this order and to request his protection for those who chose to stay at Livorno and his leave for those who wanted to depart the city.¹³² The Grand Duke confirmed Lambert in his confidence in the security of Livorno when he directed Terriesi to inform the English that any who wished to leave

¹²⁹ The communication between the merchants in England and their correspondents at Livorno is reported in a letter from Blackwell to Nottingham, Livorno, 3 March 1704, TNA SP 98/21.

¹³⁰ Blackwell to Nottingham, Florence, 29 April 1704, TNA SP 98/21; Copy of Sir L. B: intimation to the factory of English Merchants att Legorn, Florence, 30 April 1704, TNA SP 98/21.

¹³¹ Blackwell to Nottingham, Florence, 3 May 1704, TNA SP 98/21. The merchants' replies to Blackwell follow the copy of his letter to the factory of 30 April 1704.

¹³² A copy of the merchants’ petition to the Grand Duke, dated 6 May 1704, appears in *The Answer of the Merchants-Petitioners*, 100-101.

the city with their goods were free to do so and to assure those who stayed that they would continue to enjoy the security to which they were accustomed.¹³³

Communities of merchants overseas had to balance political and commercial connections that linked them at once to their own government and nation and to foreign states. The merchants well understood that they stood in between the Tuscan and English governments and they consequently sought to maintain good relations between both.¹³⁴ They thus presented themselves as loyal subjects to the English Crown who sought to mediate its differences with the Grand Duke. They equally supported the Grand Duke's conduct towards Plowman. When the merchants responded to the Grand Duke's reply to their petition, they particularly thanked him for the equal consideration he showed to those merchants who intended to withdraw from Livorno and to those who planned to remain in the city. The merchants hoped that this show of respect to the Queen's directive would lead her "to inspect the cause which had produced such an order, and to reject the advises of such as have or may yet endeavour to foment any misunderstandings with a Prince so Graciously disposed towards her Majesty & her Subjects."¹³⁵ In this way, the merchants sought to cast their opposition to Blackwell's orders as the behavior of good English subjects.

¹³³ A printed copy of the letter from the Grand Duke to Terriesi, dated Florence, 10 May 1704 may be found in TNA SP 98/21. Another copy, with an English translation, is contained in the pamphlet, *The Answer of the Merchant-Petitioners*, 102-103.

¹³⁴ The factory's deputies specifically noted that they were "forced to stand in the Gap between the Court of England & the Grand Duke." See their dispatch dated 2 March 1704, contained in their letter to the factory's trustees of 5 March 1704, TNA SP 98/21.

¹³⁵ Livorno, 20 May 1704, ASF Mediceo del Principato 2674.

Strategic and commercial interests ultimately served to defuse the diplomatic crisis that had flared between England and Tuscany. After Sir Charles Hedges replaced the Earl of Nottingham as secretary of state in April 1704, the English government took a less strident approach to the Plowman affair. Although the merchants' memorials and pamphlets may have contributed to their decision to take a more moderate approach to Plowman's case, English ministers were well aware of the fact that their merchants and fleets depended on the port of Livorno as a neutral harbor within a sea ringed by Bourbon powers.¹³⁶ Livorno's naval and commercial importance largely precluded England's government from following up on its intimations to use force against Tuscany in order to force the Grand Duke to pay restitution to Plowman. Blackwell was thus ultimately advised that he "may have been a little too quick" in instructing the merchants to prepare to leave Livorno, since the English government had not yet decided what level of compensation to demand of the Grand Duke.¹³⁷ Even after the Crown fixed the amount it thought due to Plowman and his colleagues, ministers did not press the demand nearly as forcefully as they had formerly done. Blackwell, who had become a major irritant for the Tuscan government, was subsequently recalled and replaced by the civil lawyer, Sir Henry Newton, who proved to be more diplomatic in his dealings with both the Grand Duke and the English factory.¹³⁸

¹³⁶ For instance, see Giraldi to Panciatechi, London, 23 February 1703, 2 March 1703, and 9 October 1703, BL MS Eg. 1697, f. 16r, 17v-18r, 82r; Giraldi to Panciatechi, London, 2 November and 14 December 1703, ASF Mediceo del Principato, 4216; Panciatechi to Giraldi, Florence, 9 February 1704, ASF Mediceo del Principato 4216.

¹³⁷ Hedges to Blackwell, Whitehall, 26 May 1704, TNA SP 104/91, f. 10r.

¹³⁸ Villani, "I consoli della nazione inglese a Livorno," 23.

Meanwhile, the situation in Livorno became a source of concern for representatives elsewhere in the Mediterranean. The English consul at Aleppo feared that merchants there would grow as factious as their counterparts at Livorno.¹³⁹ Other officials proposed recommendations to secure consular authority over factory communities. For example, the consul at Venice, Hugh Broughton, encouraged Hedges to have a royal order given to consuls, together with their commissions, exhorting merchants “to Unite together in Consultations on advanceing the Interest of Nationall Affairs (lett them bee never so much at variance on particular accounts of Differences) under Penalty of Forfeiting Her Majesties Protection.” According to Broughton, the contest between Blackwell and the factory was of such “Ill consequence” that it was vital to avoid such “great inconveniencys & disorders every where for the future.” Broughton then went on to lament the fact that there were always some people who were made or became “Tooles...out of Interest or Mallice, to the prejudice of their owne proper Native Country’s, & Countrymen’s Weale,” and finally expressed his wish that the English could be freed from this problem “without some such like Sovereigne remedy” as that which he proposed.¹⁴⁰

Blackwell’s interactions with the English nation at Livorno illustrated how difficult it was to extend consular or official authority over merchants in foreign cities. Neither consuls nor diplomatic officials possessed legal authority over English merchants in European ports. Equally important was the ability of merchants to resist and to oppose their consular or diplomatic representatives. Although factories were not corporate

¹³⁹ Palmer, “Letters from London to Leghorn, 1704-1705,” 61.

¹⁴⁰ Broughton to Hedges, Venice, 18 December 1704, TNA SP 99/57.

bodies, merchants were nevertheless able to lobby both English and foreign governments. Parliament's ascendancy during the last decade of the seventeenth century opened new avenues by which merchants could influence policy makers and changed the rhetorical and ideological terms in which merchants related to the state.¹⁴¹ The pamphlets written by merchants on both sides of the Plowman affair illustrate how merchants sought to influence political opinion in their favor. In their pamphlet in defense of the Grand Duke's conduct toward Plowman, the merchants and their London-based correspondents portrayed themselves as the defenders of England's interests and accused Plowman of being a Jacobite and a Catholic.¹⁴² The merchants at Livorno argued that it was they who had behaved "like true Englishmen and good Subjects" by seeking to preserve the English factory and trade at Livorno, which had been jeopardized by Plowman and his companions.¹⁴³

The development of English merchant factories depended more on the independent actions of the members of those communities than it did on official action. In 1711, the Board of Trade ordered consuls to submit annual reports as to the conditions of trade in their respective ports.¹⁴⁴ Neither consuls nor factories proved responsive to this directive; instead, the Board would go for years without considering the state of English trade in the Mediterranean or other European markets. Nevertheless, the

¹⁴¹ Gauci, *The Politics of Trade*, passim.

¹⁴² *The Answer of the Merchant-Petitioners*, vi-vii, x.

¹⁴³ "The Second Answer offered by the Trustees for the Factory at Legorne and Merchants Petitioners," 18 April 1704, TNA SP 98/83, f. 67r. This document was reproduced in, *The Answer of the Merchant-Petitioners*, 27.

¹⁴⁴ D.B. Horn, "The Board of Trade and Consular Reports, 1696-1782," *The English Historical Review* 54, no. 215 (July 1939): 476-480.

expansion of English state power and the growth of national competition at the end of the seventeenth century strengthened ties both among the members of merchant factories and placed an emphasis on the common religion and nationality of those merchants: over the course of the eighteenth century, the English nation at Livorno increasingly defined itself according to the subject status and Protestant religion shared by its members.¹⁴⁵

Although English factories became more tightly organized during the eighteenth century, the institutional evolution of merchant communities owed little to state or official intervention.

IV. Conclusion

The inability of the Crown to extend its jurisdictional authority over English merchant communities in Italian ports illustrated changes in the political and commercial organization of Mediterranean trade that distinguished southern Europe from North African and the Levant. During this period, territorial and jurisdictional conceptions of sovereignty coexisted and collided as the claims of princes to authority over their subjects intersected with the jurisdiction that rulers claimed over their own dominions. Italian opposition to the extraterritorial jurisdiction of foreign courts and consuls points at once to the gradual ascendancy of the territorial state within Europe and to the endurance of models of sovereignty rooted in the relationship between sovereign and subject. French attempts to establish the jurisdictional authority of consuls in foreign ports during the

¹⁴⁵ In 1745, the British merchants at Livorno explicitly excluded Catholics from participation in meetings of the factory, see “Reasons Humbly Offered in Answer to a Memorial, and other Papers, Transmitted by His Grace the Duke of Newcastle; To Burrington Goldsworthy Esq. His Majesty’s Consul at Leghorn, and by Him Communicated to us in Defence of a Convention Lately Entered into, and Support of Our Resolution to Exclude Roman Catholick Members from being Admitted to Our National Assemblies,” Livorno, 5 April 1745, TNA SP 105/302, f. 76r-78r.

eighteenth century further illustrated the coexistence of and competition between different ideas regarding the organization of sovereign and juridical authority.¹⁴⁶ On 4 January 1713, the French Crown issued an “Ordonnance de Marine,” which directed French subjects in foreign ports to bring intra-national disputes and legal cases to their consul, rather than to local courts.¹⁴⁷ The efforts of French consuls and diplomats to enforce this measure in ports around southern Europe produced several decades of disputes that contrasted the territorial sovereignty of Italian princes with “the delegated sovereignty of the Most Christian King outside of his dominions and his own personal power with respect to the merchants.”¹⁴⁸ The ability of Italian princes and rulers of other European states to defeat French jurisdictional claims prevented the rise of a consular regime in Europe comparable to that in the Ottoman Empire.

Contests over the jurisdictional authority of consuls led Italian to distinguish the political organization of trade along geographical and cultural lines. In opposition to the jurisdictional claims of the French consul at Livorno, Antonio Francesco Montauti, the Tuscan Secretary of War, denied that the earlier “Ordonnances de Marine” of 1681 and 1689, which also established the jurisdictional authority of consuls, were applicable to

¹⁴⁶ Jean-François Labourdette, *La Nation française à Lisbonne de 1669 à 1790: entre Colbertisme et libéralisme* (Paris: Fondation Calouste Gulbenkian, 1988), 190-195; Anne Mézin, *Les Consuls de France au Siècle des Lumières (1715-1792)* (Paris: Ministère des affaires étrangères. Direction des archives et de la documentation, [1998]), pp. 37-39; Jean Pierre Filippini, *Il Porto di Livorno e la Toscana (1676-1814)*, 3 vols. (Napoli: Edizioni Scientifiche Italiane, c. 1998), 2: 410-414.

¹⁴⁷ Jean-Pierre Filippini, “Le problème de l’application des ordonnances de marine dans une échelle italienne, Livourne,” in *Pouvoirs, contestations et comportements dans l’Europe moderne*, ed. Bernard Barbiche, Jean-Pierre Poussou and Alain Tallon (Paris: Presses de l’Université Paris-Sorbonne, 2005), 477-478.

¹⁴⁸ Robert Zaugg, “Judging Foreigners: Conflict Strategies, Consular Interventions and Institutional Changes in Eighteenth-Century Naples,” *Journal of Modern Italian Studies* 13, no. 2 (2008):174. On the trajectory of these recurring jurisdictional disputes, see Filippini, “Le problème de l’application des ordonnances de marine,” 477-478.

Livorno because they referred to the ports of the Ottoman Empire. According to Montauti, the diversity of laws and customs present in the Levant required that consuls adjudicate cases between members of their nation. However, such jurisdiction was unnecessary in Christian countries where “justice is well administered.”¹⁴⁹ The Tuscan Secretary of State, Giovanni Antonio Tornaquinci, in turn, denied the argument of the French consul Benoît de Maillet that jurisdictional authority was incumbent in his office as consul. Instead, like Montauti, Tornaquinci argued that consuls possessed jurisdictional authority only in Muslim countries and not in Christian ones, “because in these Justice is administered according to the law, and not barbarously as the Turks do.”¹⁵⁰ Savoyard officials deployed similar arguments when the new French consul to Nice and Villefranche attempted to assert his jurisdictional authority over French merchants in those ports. An anonymous memorial, probably from 1713, noted that French merchants residing at Genoa appeared before that city’s courts, since the French king’s edicts were observed only “in the Scales of the Levant, that is on the Coast of Barbary, where, on account of the differences of languages, and of customs, this practice is thought necessary.”¹⁵¹

¹⁴⁹ Montauti to Tornaquinci, Florence, 10 March 1713, ASF Mediceo del Principato, 2243.

¹⁵⁰ “...se la pretende poi sul puro titolo di Console, questo non la porta seco, altro, che nei Paesi de Turchi, i quali non dan regola à queilli di Cristiani, perche in questi si Ammistra La Giustizia con Leggi perfette, e non alla Barbara come fanno i Turchi,” Tornaquinci to Montauti, Livorno, 20 September 1713, ASF Mediceo del Principato, 2243.

¹⁵¹ “...osservandosi solo il disposto delli editti del Ré Xmo, nella scala di Levante, cioè nella Costa di Barbaria insú, che pur la diversità delle lingue, e dei Costumi, si é stimata necessaria tal prattica,” “Narrative di quanto è successo per il preteso stabilimento da Consoli francesi nella Città di Nizza e quanto si prattica da altri Consoli,” AST Città e Contado di Nizza, Consoli Stranieri, Mazzo 1, Fascicolo 11 primo, 405.

The institutional and legal division between Europe and the wider world and between the European and Middle Eastern or North African spheres of the Mediterranean was a gradual and inconsistent process. Italian opposition to the extraterritorial jurisdiction of French consuls explicitly contrasted conditions in southern Europe from those in the Levant, while French officials argued that French merchants were responsible to their national officers in all foreign ports. Nevertheless, the fact that English ministers made few efforts to establish the jurisdictional authority of consuls in Italian ports during the eighteenth century illustrated the extent to which they had accepted the territorial basis for jurisdiction within Europe. It is not entirely clear why English diplomats and ministers gave up on seventeenth-century claims to the jurisdictional authority of consuls. However, Robert Balle's letters in support of the efficacy and justice of Tuscan courts suggests that many merchants preferred the jurisdiction of foreign courts to that of representatives who might use that authority against their fellow merchants. In 1725, the Duke of Newcastle admonished the English consul at Messina, John Chamberlain, for insisting upon his jurisdiction over English merchants at that city in the face of their opposition. According to Newcastle, "if the Merchants, for whose benefit this Court was intended, have any grounds to complain, that it does not answer that end, but on the contrary that they are aggrieved by it, it is an argument of great weight against the continuance of it."¹⁵² It thus seems that the English

¹⁵² Newcastle to Chamberlain, Whitehall, October 1725, TNA SP 93/7, f. 177v. Following the end of the War of the Spanish Succession and the cession of the Kingdom of Sicily to the Duke of Savoy, England obtained a commercial treaty with that new monarch that provided for consular jurisdiction over civil cases between English merchants in Sicilian ports. This jurisdiction appears to have been suspended in the mid-1720s after English merchants petitioned the court of Vienna, which had taken possession of Sicily in 1720, see Chamberlain, Messina, 18 June 1725, TNA SP 93/7, f. 173v-174r; Chamberlain to Newcastle, Messina, 6 March 1726, TNA SP 93/7, f. 206r.

government felt little reason to try to establish or enforce the jurisdictional authority of consuls when merchants themselves were disinclined to take cases to their consul.

Early modern European states, like the Ottoman Empire and the North African regencies, were segmented bodies composed of layers of jurisdictional authority.¹⁵³ With regards to legal authority over foreign merchants, however, Italian ministers refused to delegate jurisdictional responsibility to foreign officials as their Ottoman counterparts did. As a result, the expansion of English sovereign and legal authority took a different course in southern Europe than it did elsewhere in the Mediterranean and in the wider world. English and French arguments in favor of consular jurisdiction centered on the universal authority of the sovereign over his or her subjects. From this perspective, a prince's jurisdictional and sovereign authority followed subjects around the world. The refusal of Italian states to concede extraterritorial jurisdiction to English courts and consuls illustrated how rulers' consolidation of sovereignty over their territorial dominions sharply limited this vector for the expansion of Crown authority into the western Mediterranean.

¹⁵³ Windler, "Representing a State in a Segmentary Society," 235-236.

Chapter 3

English Navigation and Christian Corsairs, 1660-1688

...it is clear that His Majesty will not permit of him, that which no other in the world seeks to do, and was the only cause of the break with the Barbarians [North Africans], not wishing to allow them to visit his ships.¹

During the later half of the seventeenth century, the expansion of the English state into the Mediterranean was most evident at sea. Although the Crown largely failed to establish its extraterritorial authority over English merchants in foreign ports, it successfully made its authority felt over its subjects' navigation. The increasingly global reach of the Crown was particularly apparent as it sought to secure its subjects' shipping and commerce from the effects of the *corso*, the perennial and religiously inspired naval war waged between Christian and Muslim corsairs. The Crown's efforts to exempt its subjects' navigation from inspection by corsairs in search of enemy goods contributed to a larger process whereby subjecthood and nationality increasingly determined the political geography of a sea long defined by religious warfare and rivalry.²

The threat of the Muslim corsairs of Morocco and of the Ottoman regencies of Algiers, Tunis and Tripoli turned the Mediterranean into a center of English naval and military activity. England's need for a reliable Mediterranean port from which fleets

¹ Ephraim Skinner to Ferdinando Bardi, Livorno, 10 September 1672, TNA SP 98/14, f. 216r.

² Molly Greene argues persuasively that from the late seventeenth century, the growing importance of nationality for the organization of both commerce and community in the Levant slowly brought to a close an "ancien regime" of flexible and multiple identities in which neither religion nor subjecthood were totally exclusive: see Greene, *A Shared World: Christians and Muslims in the Early-Modern Mediterranean* (Princeton: Princeton University Press, 2000); eadem., "Beyond the Northern Invasion: The Mediterranean in the Seventeenth Century," *Past & Present*, no. 174 (2002): 42-71.

could sail against North African corsairs was a primary motivation for the acquisition of Tangier.³ The Earl of Winchilsea particularly thought that colony would aid his negotiations with the Ottoman Empire and its dependencies, since “Asia will bee more in awe and my presence there more respected, when I can bee seconded by so powerfull and dangerous neighbours.”⁴ Under Charles II, the dispatch of English fleets to North Africa became routine and, after the Third Anglo-Dutch War, wars against Tripoli and Algiers dominated naval activity and strategy.⁵ Yet, although the threat of corsairs led the English state to go to new lengths to protect its subjects overseas, its interactions with North African corsairs remain poorly understood within the wider context of England's early modern expansion.

In order to recapture and to explore the reasons for England's growing presence in the Mediterranean, this chapter shifts focus to the English Crown's response to the threat posed by Christian corsairs to English navigation in the later half of the seventeenth century.⁶ While the activity of those corsairs raised fears for the reputation and profit of

³ Sir Henry Sheeres gave the most sustained argument for Tangier's role in England's wars against Algiers in, *A Discourse Touching Tanger: in a Letter to a Person of Quality* (London, 1680). For similar statements of Tangier's strategic importance for England's relations with North African corsairs, see also James Howell, “A short Discours of the Late Forren Acquests which England holds,” TNA SP 29/52, f. 262r; Hugh Cholmley, “Several discourses concerning the interest of Tangier,” BL MS Lansdowne 192, 92v-93v.

⁴ Winchilsea to Charles II, Lisbon, 12/22 November 1660. The letter has been calendered in Winchilsea's letter book in the *Report on the Manuscripts of Allan George Finch, Esq. of Burley-on-the-Hill, Rutland*, ed. S.C. Lomas (London: His Majesty's Stationery Office, 1913), 1: 84-85. In a letter written the week before to the Earl of Southampton, the Lord Treasurer, Winchilsea asserted that Tangier “would bee a convenient port for our King's shipping, both to curb and bridle all the Christian shoare and to make invasions on the Moores by land, whensoever they practise their accustomed pyracies,” *ibid.* 83.

⁵ Sari Hornstein, *The Restoration Navy and English Foreign Trade, 1674-1688* (Aldershot: Scolar Press, 1991).

⁶ English consular and diplomatic records from the Mediterranean point to some dozen ships taken or “pillaged” of cargo and passengers by Christian corsairs through the later half of the seventeenth century. By contrast, Robert Cole, the English consul in Algiers at the start of the eighteenth century, estimated that 157 English ships and 3000 sailors were taken by the Algerians during the war of 1677-1682, Godfrey

English navigation, their impact on trade has been largely ignored in studies of England's expanding presence in the Mediterranean.⁷ This is not entirely surprising in so far as North African corsairs captured far more English ships than their Christian counterparts and elicited a much more violent reaction. On the other hand, England's relationship with Christian corsairs highlighted the broader questions that defined the organization of English trade in the Mediterranean. The evolution of the trading regime of the seventeenth-century Mediterranean did not simply lie in the tension between conceptions of the sea as either “a collection of sovereign states bound by treaty obligations to one another” or as a political and religious frontier.⁸ Instead, the corsairs' legitimacy lay precisely in the backing they received from states and princes; crucially, corsairs were not pirates, since they engaged in legally approved and regulated maritime violence against a defined enemy. Opposition to the behavior of Christian corsairs by the new maritime powers of northern Europe revealed the degree to which the *corso* was predicated upon the authority and sovereignty of Mediterranean princes. When English ministers and diplomats rejected corsairs' claims to search all vessels they encountered (the *visità*) and

Fisher, *Barbary Legend: War, Trade and Piracy in North Africa, 1415-1830* (Oxford: Clarendon Press, 1957), 264

⁷ Peter Earle's *Corsairs of Malta and Barbary* (London: Sidgwick & Jackson, 1970) remains unique within the English language literature for considering Christian and Muslim corsairs together. For another perspective on Christian corsairs and their impact on the Mediterranean, see the articles of Michael Fontenay, “L'Empire Ottoman et le risque corsair au XVII^e siècle,” *Revue d'histoire moderne et contemporaine* 32 (April-June 1985): 185-208; idem., “Corsaires de la foi ou rentiers du sol? Les chevaliers de Malte dans le corso mediterraneen,” *Revue d'Histoire Moderne et Contemporaine* 35 (Juillet-Septembre 1988): 361-384. The best study of the place of Christian corsairs within the Mediterranean trading world is Molly Greene's recent *Catholic Pirates and Greek Merchants: A Maritime History of the Mediterranean* (Princeton: Princeton University Press, 2010).

⁸ Greene, “Beyond the Northern Invasion,” 45; eadem., *Catholic Pirates and Greek Merchants*, *passim*.

to seize enemy goods and passengers found on them, they raised contentious questions as to where authority lay in the waters of the Mediterranean.

The expanding authority of the English, French and Dutch states certainly reshaped the trading world of the Mediterranean, but the limits of this process are as important as its extent. Around the early modern world, the definition of what constituted piratical behavior extended state sovereignty over oceanic space: when rulers designated acts of maritime violence to be piracy and punished offenders, they claimed authority to exercise jurisdiction on the high seas.⁹ Even as purveyors of maritime violence found state tolerance of their actions waning in the Atlantic and Indian Oceans, treaties and sovereign support institutionalized and legitimized the *corso* in the Mediterranean. The English and their northern European counterparts sought to have their ships and subjects exempted from search and seizure by corsairs, but it would be more than a century before they aimed to stop those corsairs altogether.¹⁰ Although the *corso* declined from the late

⁹ Anne Pérotin-Dumon, "The Pirate and the Emperor: Power and the Law on the Seas, 1450-1850," in *The Political Economy of Merchant Empires: State Power and World Trade, 1350-1750*, ed. James D. Tracy (Cambridge: Cambridge University Press, 1991), 196-227; Janice Thompson, *Mercenaries, Pirates, and Sovereigns: State-Building and Extraterritorial Violence in Early Modern Europe* (Princeton: Princeton University Press, 1994); Lauren Benton, "Legal Spaces of Empire: Piracy and the Origins of Ocean Regionalism," *Comparative Studies in Society and History* 47, no. 4 (October 2005): 700-724; eadem., *A Search for Sovereignty: Law and Geography in European Empires, 1400-1900* (Cambridge: Cambridge University Press, 2010), chap. 3, "Sovereignty at Sea: Jurisdiction, Piracy and the Origins of Ocean Regionalism."

¹⁰ Some scholars have emphasized the relative military superiority that Britain and France attained over the North African regencies in the late seventeenth century as the prelude to later colonial domination, as in F. Robert Hunter, "Rethinking Europe's Conquest of North Africa and the Middle East: The Opening of the Maghreb, 1660-1814," *The Journal of North African Studies* 4, no. 4 (Winter 1999): 1-26; Matar, *Britain and Barbary, 1589-1689*, chap. 4, "Moors in British Captivity." This analysis should be treated with caution, especially as European states developed increasingly stable diplomatic relationships with the regencies in the eighteenth century that recognized them as de facto sovereign polities. The best discussion of European diplomatic relations with the regencies comes in Christian Windler's studies, especially, "Diplomatic History as a Field for Cultural Analysis: Muslim-Christian Relations in Tunis, 1700-1840," *The Historical Journal* 44, no. 1 (March 2001): 79-106; idem., "Representing a State in a Segmentary Society: French Consuls in Tunis from the Ancien Régime to the Restoration," *The Journal of Modern History* 73, no. 2 (June 2001): 233-273. M. S. Anderson's "Britain and the Barbary States in the eighteenth century," *Bulletin of the Institute of Historical Research* 29 (1956): 87-107 remains the best summary of

seventeenth century in the face of the profits of peaceful trade and the naval and commercial dominance of northern Europe's ascendant powers, Christian and Muslim corsairs both remained active through the eighteenth century. The survival of the *corso* highlighted the distinct political and legal conditions of the early modern Mediterranean, where the ability of Europe's maritime empires to define the terms of trade remained limited.

England's response to the threat posed by Christian corsairs revealed how the English state and its representatives sought to expand their authority into a maritime environment where they rarely dominated. This chapter begins by exploring the political and ideological context that shaped the *corso* and the English reaction to it. The first section thus illustrates the centrality of state sovereignty both to the ostensibly religious warfare practiced by corsairs and to England's response to the threat this violence posed to navigation. The argument then turns to the related question of whether Christian corsairs who preyed upon English vessels were "pirates." When English representatives in the Mediterranean accused corsairs of piracy, they questioned whether those corsairs had the legal right to stop or search English vessels. In the process, they also highlighted the wider problem of determining where the sovereign authority to define the legal organization of trade and navigation lay. The third section then shifts to study how

the political and economic relationship between England and the North African regencies through the eighteenth century. In contrast to assumptions by literary scholars of England's early-modern maritime dominance in the Mediterranean, historians of British naval history are now apt to emphasize the limited ability of English naval power to bring the North African regencies to terms: "The best policy for a Christian trading power was to make itself sufficiently annoying as an enemy, and sufficiently attractive as a friend, to be elected as an ally of the Barbary States, and, equally important, to preserve those alliance by a faithful observance of their terms," N. A. M. Rodger, *The Command of the Ocean: A Naval History of Britain, 1649-1815* (London: Allen Lane, 2004), 88. For a sustained discussion of the limits of British power in the Mediterranean, see Linda Colley, *Captives: Britain, Empire, and the World, 1600-1850* (New York: Anchor Books, 2002), chap. 2, "The Crescent and the Sea."

England's response to the threat of Christian corsairs related to its exchanges with the Islamic powers of the Mediterranean. Central to English interactions with both Christian and Muslim corsairs was the question of what constituted an "English" ship. The treaties England signed with the North African regencies not only established which ships were to be reputed as "English" and what privileges they were to enjoy at sea, but also confirmed that interstate relations, rather than English sovereignty, defined the political foundations of trade in the Mediterranean.

I. *The Searching of English Ships*

England's relations with both Christian and Muslim corsairs turned less on cultural or religious difference than on efforts to shield English navigation and subjects from the effects of the *corso*. In the latter half of the seventeenth century, first the Commonwealth and then the restored Crown sought to exempt English ships from inspection by corsairs in search of passengers and goods of the enemy religion. The commercial advantages of such a privilege were obvious: Spanish, Portuguese and Italian merchants, as well as their Ottoman counterparts, would be more likely to freight English vessels if they could thereby protect their property from seizure.¹¹ However, ministers, merchants and diplomats did not see the *visita* only in economic terms, but as an affront to the reputation of English navigation and to the honor of the English flag. Conversely, for Christian corsairs, the right to seize enemy goods and persons onboard neutral vessels derived from both the medieval legal traditions upon which the *corso* rested and from

¹¹ Ralph Davis, "England and the Mediterranean" in *Essays in the Economic and Social History of Tudor and Stuart England*, ed. F.J. Fisher (Cambridge: Cambridge University Press, 1961), 117-137.

early modern perspectives on the law of nations, which held that belligerents were allowed to search neutral ships for enemy goods.¹² When the English demanded that their ships be freed from the *visità*, they consequently argued that the Crown's authority over its subjects' navigation trumped the sovereign and legal rights of corsairs' state sponsors.

Arguments over whether English ships could be searched by corsairs depended upon the legal status of those vessels and of the passengers and cargo they carried. The diplomatic negotiations that followed Christian corsairs' seizure of Muslim passengers from the English ship the *Lion* in 1671 raised the issue of whether corsairs could seize passengers and cargo from English ships. In early November of that year, the *Lion*, a small merchant vessel under the command of Thomas Parker, sailed out of Tunis destined for Smyrna, freighted with cargo on the account of Parker and the ship's owners and carrying five Muslim passengers and their goods. Two weeks later, a Livornese corsair, Domenico Franceschi, approached and boarded the *Lion* after the English ship had taken refuge from bad weather at the island of Delos.¹³ Over the next two days, the corsairs searched the English vessel, seizing both the ship's cargo and its passengers. While

¹² Peter Earle, *Corsairs of Malta and Barbary*, p. 36-37 and Emily S. Tai, "Piracy and Law in Medieval Genoa: The *Consilia* of Bartolomeo Bosco," *Medieval Encounters* 9, nos. 2-3 (2003): 262. On early modern conceptions of neutral rights at sea, see Philip J. Jessup and Francis Deák, "The Early Development of the Law of Neutral Rights," *Political Science Quarterly* 46, no. 4 (December 1931): 485-486.

¹³ Born in Corsica, Franceschi was part of a family of corsairs based in Livorno, his brother Bartolomeo and relation Giovanni Francesco Cardi both being corsairs as well. The corsairs of Livorno are little studied compared to their better known Maltese counterparts. The existing work has tended to focus on the Order of San Stefano, the crusading order instituted by Cosimo I in 1561, as in Gino Guarnieri, *Cavalieri di Santo Stefano: Contributo alla storia della marina militare italiana, 1562-1859* (Pisa, 1928), while the more recent work of Franco Angiolini has concentrated on the relationship between the order and the Tuscan state, see "Il Granducato di Toscana, l'Ordine di Santo Stefano e il Mediterraneo (secc XVI-XVIII), *Ordens Militares: Guerra, religião, poder e cultura*, Actas do III Encontro sobre Ordens Militares, ed. Isabel Cristina Ferreira Fernandes (Lisbao: Edições Colibri, 1998), 39-61. There is little available information on Franceschi or his fellow Livornese corsairs, as Salvatore Bono notes in, *Corsari nel Mediterraneo: Cristiani e musulmani fra guerra, schiavitù e commercio* (Milano: Arnoldo Mondadori, 1993), 61.

Parker protested and exhibited first his flag and then his papers to prove that the ships and the goods it carried were English, Franceschi accused him of coloring Muslim goods and insisted that “all goods which came from Barbary & Turkey were his lawfull prize.”¹⁴ Eventually released by Franceschi and continuing his voyage to Smyrna, Parker there obtained letters from the city's European consuls testifying to the ownership of the *Lion's* cargo and, after sending a boat after Franceschi, he secured the return of the portion of the cargo that belonged to him and the ship's owners. However, the passengers and their goods remained in captivity.¹⁵

Assaults on English vesssels threatened their reputation as neutral carriers that could pass safely through the violent waters of the Mediterranean, safeguarded by England's navy and treaties with the North African regencies. England's diplomatic and

¹⁴ Deposition of Thomas Parker before Lionell Jenkins at the High Court of the Admiralty, 14 May 1672, TNA HCA 3/52, f. 460r. The exchange between Parker and Franceschi revolved around article #23 of the regulations for Livornese corsairs, which prohibited them from molesting English ships sailing between England and the Ottoman Empire: “Che non diano impedimento à nessun Vassello Inglese, quando haveranno Le solite Lettere d'Ammiralità, che di Turchia navighino per Li stati del Rè della Gran Brettagna, e dalli stati del suddetto Rè per Constantinopoli, ò altre parti di Turchia, ancorche portassero Persone e robe d'Infedeli; non havendo ma inteso, ne intendendo S.A. d'impedire il dritto commercio di traffico, e mercatura frà il Turco, e Li stati del sopra nominato Rè della Gran Brettagna, ma di mostrar sempre alla M.S. ogni migliore intelligenza et ossequio,” TNA SP 98/14, f. 49r. Ephraim Skinner, the English consul in Livorno, supported Parker, arguing for the release of the prisoners and their goods on the grounds that “mentre sotto la bandiera della maesta Brittanica, unito con il tenore delle Capitulationi di S. A. S. li vasselli di nostra natione possano assicurare e roba e persone di chi si sia,” Skinner to Conte Bardi, 8 April 1672, TNA SP 98/14, f. 42v. In response, Franceschi reiterated his argument and accused Parker of not carrying any passes: “Dunque non havendo detto vaselo ne letere d'amiralita ne partito della gran bertagna ne di torchia per li stati del suddetto Re ma di tunisi e smirne dove a fatto piu viaggi con ragione poteva eser visitato,” Franceschi to Bardi, 27 April 1672, ASF Mediceo del Principato, 1804, #41.

¹⁵ Parker's account of his encounter with Franceschi and the seizure of the goods from the *Lion* may be found in the depositions he made, first, to Paul Rycaut, the English consul at Consul, and then before Leoline Jenkins in the High Court of the Admiralty; respectively, TNA SP 97/19, 174r-175r and HCA 3/51, f. 459r-461v. Parker testified before the English admiralty court to account for his failure to leave Smyrna within the time contracted for by merchants freighting the ship, leading to a suit between them and the ship's patrons. Bartolomeo Franceschi, the brother of Domenico, offered a similar account of this incident to Bardi; however, Bartolomeo maintained that Domenico had assured Parker that those goods belonging to Christians would be restored to them if their ownership could be proved, see B. Franceschi to Bardi, 23 March 1672, ASF Mediceo del Principato, 1804, #41.

commercial representatives around the Mediterranean thus feared the effect Franceschi's actions would have on English navigation. In 1672 Daniel Harvey, England's ambassador to the Ottoman Empire, wrote to London to report the "Insolencies & piracis" inflicted on the *Lion*. Harvey expressed concern that the Ottoman authorities would hold the English merchants in the Levant accountable for the seizure of the Muslim passengers and warned that if "this action is not taken notis of" it would "be an Incouradgment to him [Franceschi] & others to venter on the like."¹⁶ The English consul in Tunis, John Earlsman, similarly feared that "if such affronts are putt up not only our Shipping will grow in disteeme, but our Reputation amongst the Turks much decline."¹⁷ In Livorno, the English consul Ephraim Skinner wrote to warn Lord Arlington, the Secretary of State, that if the English recognized Tuscan claims to search English ships, "we shall hereafter be as much afraid of them, as of our Enemies & will much discredit our Navigation."¹⁸ He further advised that "tis more then necessary this should be resented, Else t'wilbe an allowance to them do the like in the future, & I beleeeve theres nothing if they were prest to it, that they would not doe."¹⁹

The English reaction to the news of Franceschi's assault on the *Lion* highlighted both real anxiety at the activity of Christian corsairs and a critical shift in the attitude of the English state towards the Mediterranean navigation of its subjects. Braudel famously

¹⁶ Constantinople, 15 March 1671/2 TNA SP 97/19, f. 176r.

¹⁷ Earlsman, Tunis, 1 July 1672, TNA SP 71/26, f. 203v.

¹⁸ Skinner to Joseph Williamson, 29 March/8 April 1672, TNA SP 98/14, f. 50r. Skinner had further cause for concern when another corsair setting out from Livorno under the Grand Duke's colors declared that he would follow Franceschi's example and search English ships for Muslim passengers and goods, Skinner to Williamson, 20/30 May 1672, TNA SP 98/14, f. 118v.

¹⁹ Skinner to Williamson, 29 April 1672, TNA SP 98/14, f. 68r.

labelled the entry of English and other northern European ships into the Mediterranean as a “Northern Invasion,” memorably recounting that the “Dutch swarmed into the Mediterranean like so many heavy insects crashing against the window panes - for their entry was neither gentle nor discreet.”²⁰ However, the national terms in which Braudel saw this process are viable only in the most general sense; the English and Dutch ships that sailed into Mediterranean at the end of the sixteenth century depended upon firepower and obfuscation for protection, not upon the flags they flew or the sovereign protection those flags conferred.²¹ It was only in the second half of the seventeenth century that the Crown began to demand that corsairs avoid interfering with English navigation and to take effective measures to secure ships and subjects sailing in Mediterranean waters.²² In 1655 the English consul in Algiers was instructed to demand

²⁰ Fernand Braudel, *The Mediterranean and the Mediterranean World in the Age of Philip II*, tr. Siân Reynolds (London: Collins, 1972), 2: 635.

²¹ A petition from English merchants in Livorno that recounted the seizure of English ships and their Muslim passengers by Tuscan corsairs since the accession of James I concluded by noting that among the captured flags hung up in the church of St. Stephen, “are the English flaggs hangd up, that were taken in thes shipp, mixing them with those of Infidells as it were for a Trophe of a victory gotte against us.” The merchants warned that if they did not receive assistance, they would be forced “to protect ourselves under the name of other Nations to the great dishonor of his Majesty,” TNA SP 98/2, f. 256r. For the problems of understanding the seventeenth-century Mediterranean in terms of national groups, see especially Molly Greene, “Beyond the Northern Invasion,” 43-45. On accommodation as a strategy within England's early modern commercial expansion, see Alison Games, *Web of Empire: English Cosmopolitans in an Age of Expansion, 1560-1660* (Oxford: Oxford University Press, 2008), especially chap. 2, “The Mediterranean Origins of the British Empire.”

²² Following the utter failure of Sir Robert Mansell's expedition of 1620, which was the only fleet sent against the North African regencies in the first half of the seventeenth century, Sir Thomas Roe negotiated a treaty with Algerian and Tunisian commissioners at Constantinople in 1622 that established, “if is shall happen after the Conclusion that itt shall be found that any English shipp shall soe carry or protect the Goods of our Ennemyes they shall stand to their perill and receave punishment,” see “The Aggreement made with the Commissioners of the Grand Signore in behalfe of Algiers. (by Sir Thomas Rowe),” TNA SP 103/1, 139. The divan, or ruling council, in Algiers subsequently complained in 1624 that English ships were not turning over to Algerian corsairs “the goods of our Ennemyes, being embarked in their shipp, as they were used to doe in former times,” see “The Translation of an other Letter from Algier to his Majestie,” 15 October 1625, TNA SP 71/1, f. 48v. English violations of Roe's treaty contributed to another outbreak of war between England and Algiers in 1629, one in which the English navy mounted no effective resistance to the North African corsairs. See, generally, Fisher, *Barbary Legend*, 105-209.

restitution for “any Goods or Persons (of what Nacion soever)” that were taken from English ships by corsairs.²³ Following the Restoration, Charles II insisted that Algiers confirm the privileges it had extended to the Commonwealth.²⁴ After the Algerians refused to confirm the freedom of English ships from search, the Secretary of State, Edward Nicholas, advised England’s new ambassador to the Ottoman Empire, the Earl of Winchilsea, that a fleet had been dispatched to Algiers and that if the Algerians did not agree to maintain the same articles they had with Cromwell, they would be “made to repent it.”²⁵ By the 1670s, England's treaties with the North African regencies had established that passengers and cargoes onboard English vessels were not subject to seizure.²⁶

²³ Edmund Cason's treaty of 1646 provided that Algerian warships were not to interfere with English ships, “nor touch, nor medle with them,” but it was under Cromwell that the English state established its effective presence in the Mediterranean. A copy of Edmund Cason's treaty may be found in the Record Office for Leicestershire, Leicester and Rutland (ROLLR) Finch MS DG 7, 1537-1659 and a further copy is in TNA SP 103/1, 152-153. For background on Cason, see Fisher, *Barbary Legend*, 210-214. Admiral Robert Blake confirmed Cason's articles in 1655.

²⁴ A list of the additional articles proposed by Winchilsea, including that which called for the protection of all Algerian and Christian passengers on board English ships is in TNA: SP 103/1, 127.

²⁵ Edward Nichols to the Earl of Winchilsea, Whitehall, 10 May 1661, TNA: SP 44/1, 1. A year later Nichols advised Winchilsea that the Earl of Sandwich had been dispatched with a fleet to Algiers, “with instructions to demand their performance of the Articles formerly agreed on by tem with the English Nation, & particularly that according to the Treaty, they should not visitt or search any of his Majestys Subjects Ships, nor interrupt them in ther Trade; & in case those of Algiers shall deny to agree to the same, then his Lordshipp is to use all hostile meenes to compell them thereto, his Majesty requireing no more from them then formerly they accorded to the Usurper here by Treaty,” Whitehall, 27 June 1661, *ibid.*, 5.

²⁶ The treaties that England made with Tunis and Tripoli both established that corsairs could send one boat, with two men on board, to confirm that a ship was English, which was established by carrying a valid pass or having a crew that was two-thirds English. All passengers and cargo aboard an English ship were to be left undisturbed. Conversely, England's treaty of 10 November 1662 with Algiers allowed Algerian corsairs to seize enemy passengers and their goods from English ships, provided that they paid for their freight. England's treaty with Algiers of 1672 provided for English ships to carry passengers and goods of any nation without impediment, but it was only the ultimately long-enduring treaty of 1682 that clearly established that no passengers or goods were to be taken off English ships, Clive Parry, ed., *The Consolidated Treaty Series*, Vol. 7, 1661-1663 (Dobbs Ferry: Oceana Publications, 1969), 244-246, 253-256 and 273-275; Vol. 12, 1671-1673, 85-86; Vol. 16, 1680-1684, 205-211.

The reasons for the particular timing of northern European assertiveness against the sponsors of corsairs are unclear. Clearly, the aggression of the English and French against the North African regencies reflects the fact that both states emerged from mid-century political crises far more powerful than they had previously been. More broadly, after the notoriously chaotic conditions of the early seventeenth century had settled into a decade of relative quiet, the Ottoman invasion of Crete in 1645 unleashed a wave of insecurity into the eastern Mediterranean.²⁷ Samuel Boothouse, the English consul at Tunis, contended that the seizure of Tunisian passengers from the *Goodwill* in 1651 was the first violation of a Christian ship by Christian corsairs since 1616.²⁸ In fact, Christian corsairs had taken passengers and goods off Christian ships through the first half of the century.²⁹ Nevertheless, as the Ottoman campaign to conquer Crete wore on for more than two decades, there was a dramatic increase in the activity of corsairs, and particularly of Christian corsairs, in the Levant that continued after the fall of Candia in 1669.³⁰

²⁷ Fontenay, "Empire Ottoman et le Risque Corsair," 188.

²⁸ Samuel Boothouse, *A Brief Remonstrance of Several National Injuries and Indignities perpetrated on the Persons and Estates of publick Ministers and Subject of his Common-wealth, by the Dey of Tunis in Barbary* (London, 1653), A²v. However, Boothouse may have been right when he insisted, "the Visitation or Molestation of any *English shipping* by your *Squadron* (or any other Arms under your Banner) is unwonted and without example," *ibid.*, 11. When Colbert later complained that French ships were visited by the knights of Malta, while the English and Dutch were allowed to sail freely, the grand master assured him that the order never failed to visit and capture "les Anglois et holandois, si ce n'est lorsque Nous les trouvons les plus forts," Nicholas de Cotoner to Colbert, 7 March 1666, National Library of Malta (NLM) Archives of the Order of Malta (AOM) 1558, 75. It is possible that ships of the Order of Malta rarely searched the relatively large English ships that sailed in the Levant until the mid-seventeenth century.

²⁹ Claude Petiet, *Le Roi et le Grand Maître* (Paris-Méditerranée: Paris, 2002), 126-127.

³⁰ Michel Fontenay, "L'Empire Ottoman et le Risque Corsair," 188; B. J. Slot, *Archipelagus Turbatus: Les Cyclades Entre Colonisation Latine et Occupation Ottomane, c. 1500-1718* (Istanbul: Nederlands Historisch-Archaeologisch Instituut Te Istanbul, 1982), 2: 194.

The confluence of the growing state and naval strength of northern Europe's maritime powers and an upswell in maritime violence reshaped the Mediterranean trading regime in the later half of the seventeenth century. Franceschi himself noted the benefits that English shipping would receive if freed from such searches when he warned the Conte Ferdinando Bardi, the Tuscan secretary of war, that if the English secured “this privilege to traffic from place to place without being subjected to visits, it would redound with great prejudice to all the other nations since they alone would be able to traffic and trade all the goods and merchandize of the turk without being impeded.”³¹ More importantly, the growing commercial and naval power of England and France fundamentally changed the balance of power in the Mediterranean and the political context in which the *corso* operated. Though the corsairs' legitimacy depended on the backing they received from states and princes as much as on a crusading ideology, their cruises amounted to a perpetual holy war that made religious difference central to regulation of Mediterranean commerce and navigation. The English and French instead emphasized the primacy of subjecthood and national affiliation in the definition of Mediterranean navigation and, in the process, they also undermined the legal and ideological basis of the *corso*. The Algerian divan thus objected to Winchilsea's demands that English ships be exempt from inspection by observing that it would be better their ships rotted in port, than to sail only to discover that they could find no prizes, “all trade

³¹ “E se la suddetta natione havere questo privilegio di potere trafficare da luogo a luogo del turchi senza essere soto posto a visite ridondarebe con grandissimo perguditio di tutte le altre natione per che loro solo potrebero trafficare e commerciare tutte le robe e marcantie del turco senza esere inpediti,” Franceschi to Bardi, Livorno 27 April 1672, ASF Mediceo del Principato, 1804 #41.

and richesse of the Christians being amassed, & defended in English vessills, which by them are no more to bee touched, then if they were prohibited, & sacred.”³²

When the English and French Crowns denied corsairs the right to search their subjects' ships, they asserted that their sovereign authority defined the organization of trade in the Mediterranean. Louis XIV made this point plain after a ship of the crusading Order of Malta seized Jewish passengers from a French vessel in 1664, when he called for the release of these captives and stressed his intention to “preserve for my subjects the liberty of the trade of the Levant which would be entirely ruined if I suffered similar infringements on my authority.”³³ According to the French king, his flag and passport, carried by the ship's captain, should have functioned as the passengers “safe conduct and security.”³⁴ Maltese corsairs were required to respect safe-conducts granted by Christian princes, but Louis changed the relationship of the sovereign to subjects' navigation when he demanded that corsairs treat the flag with the same deference as they did a sovereign's letter of safe-conduct.³⁵ In this respect, the commissioners assigned by the Grand Master to consider Louis XIV's letter appear to have missed the point when they warned that the king's demands would render meaningless the privilege of sovereigns to grant safe

³² “A Narrative of the treaty with Algier by commands & instructions from his Majesties beganne the 23th days of November 1660,” ROLLR Finch MS DG 7, Letterbook of the Earl of Winchilsea, 22. Another copy of Winchelsea's account of his treaty negotiations is contained in TNA SP 103/1.

³³ “...le desir que J'ay de conserver a mes sujets la liberté du commerce du Levant qui seroit entierement ruinè si Je souffrois de pareilles entreprises sur mon autorite,” Louis XIV to the Grand Master, 8 March 1664, NLM AOM 260, f. 184v. A transcription of this letter, taken from the French archives, appears in Petiet, *Le Roi et le Grand Maître*, 127-129.

³⁴ “...ils ont deub trouver leur sauf conduit et leur seuretté sous mon pavillon, et mon passeport,” Louis XIV to the Grand Master, 8 March 1664, NLM AOM 260, f. 184v.

³⁵ Greene, *Catholic Pirates and Greek Merchants*, 114.

conducts, by giving every ships' master the same authority as princes to grant them.³⁶

Louis had instead asserted his sovereign protection over all French ships. In 1673, after years of debate with the French monarchy, the Order agreed to allow French vessels to pass undisturbed.³⁷

English and French demands that their ships be freed from search by corsairs were about more than either the honor of the flag or commercial advantages. When English ministers insisted on the immunity of English ships at sea from interference by corsairs, they treated the ship as a legal and sovereign space. As the Crown established the immunity of English ships from search or seizure it showed that in the Mediterranean, as much as in the Atlantic and Indian Oceans, ships were “islands of law” and “vectors of crown law thrusting into ocean space” that carried states' legal jurisdiction across oceans.³⁸ Questions of sovereignty and state authority thus underlay English concerns over the seizure of Muslim passengers and goods from the *Lion*. In the summer of 1672, Charles II requested that Parker's case be resolved without further delay and the Grand Duke, Cosimo III, accordingly appointed the jurist and official Ferrante Capponi to adjudicate the matter.³⁹ Skinner meanwhile wrote to Bardi to express his confidence in

³⁶ “E finalmente dall'importar tanto il venire le robbe sopra un Vassello francese, quanto l'haver salvo condotto, ne siegue, che qualsisia Padrone di Barca have la medesima autorità, che un Principe nel dar salvo condotto: et anche il privarsi li Principi di dare tali salvi condotti, giache non sarebbero più necessari,” 5 May 1664, NLM AOM 260, f. 184v.

³⁷ On France's demands that the Order exempt its ships from the *visita*, see Earle, *Corsairs of Malta and Barbary*, 110-112 and Philip McCluskey, “Commerce before Crusade? France, the Ottoman Empire and the Barbary pirates, 1661-1669,” *French History* 23, no. 1 (March 2009): 1-21.

³⁸ Benton, “Legal Spaces of Empire,” 704.

³⁹ A partial copy of this letter containing its opening lines is in TNA SP 104/88, f. 21r. I have thus far been unable to locate a copy of the letter in full and have drawn this description of its contents from Capponi's memorial in TNA SP 98/15, f. 112r. See also the copies of Bardi's letters to Skinner, of 3, 9 and 13 September 1672, TNA SP 98/14, f. 212r-v. For Capponi's role within the Tuscan government of Cosimo

the Grand Duke's disposition to satisfy Charles's request for the restitution of his subjects' losses and to ensure "that no one under the flag of His Majesty was to be molested."⁴⁰

Skinner and the English government did not question Tuscan jurisdiction over the case of the *Lion*, but they did make it clear that only one outcome would be acceptable.⁴¹ In response to Bardi's suggestion that he dispatch any further relevant information to Capponi, Skinner gave his opinion as to how the case stood:

But as for the liberation of the turks and their goods, and the punishment of the malefactor, I do not see how, while His Majesty had so clearly expressed himself, I can enter into this matter other than to provide information of the act, as I have already done, and to note that in my opinion, the only question that remains is whether the said Captain had done wrong or no. If the answer is no, it is clear that His Majesty will not permit of him, that which no other in the world dares to do, and was the only cause of the break with the North Africans, not wishing to allow them to visit his ships.

Conversely, if Franceschi had acted improperly, then he should be summarily sentenced and punished.⁴²

III, see Francesco Martelli, "<Nec Spes nec Metus> Ferrante Capponi, giurista ed alto funzionario nella Toscana di Cosimo III," and Franco Angiolini, "Il principe e i cavalieri: l'auditore del Gran Maestro e l'Ordine di S. Stefano nell'età di Cosimo III," in *La Toscana nell'età di Cosimo III*, ed. Franco Angiolini, Vieri Becagli, and Marcello Verga (Firenze: Edifir-Edizioni, 1993), 137-163; 193-197.

⁴⁰ "...et che nessuno sotto la bandiera di Sua Maestà habbia di essere molestato," Skinner to Arlington, Livorno, 31 August 1672, TNA SP 98/14, f. 215r.

⁴¹ Following Franceschi's seizure of the *Lion*'s cargo and passengers, Ephraim Skinner and the deputies of the English nation at Livorno were initially reluctant to accept Bardi's suggestion that Parker bring his case before the Grand Duke's tribunals. Skinner explained that he was unwilling to bring the matter before a Tuscan court since a law suit against Franceschi would be time-consuming, costly and probably futile, as Parker had given Franceschi a receipt for the goods returned to him that absolved the corsair of further repayments. Skinner, did not, however, deny Tuscan jurisdiction over the matter, Skinner to Arlington, Livorno, 15 April 1672, TNA SP 98/14, f. 53r.

⁴² "...ma per la liberatione delli Turchi con la loro roba, et il gastigare il mal fattore, non vedo, mentre che Sua Maestà si sia cosi ben dichiarato, come posso Io altrimenti in cio entrare, si non di dare informatione del fatto, come gia e seguito, et segno che in mio giuditio, tutto si restringie se il suddetto Capitano habbia fatto male, o, no; se e di no, chiaro e che S. Maestà non permettera in lui, quello che nessun'altro nel mondo ardisce di fare, et fu la sola causa della rottura con i Barbari, non volendoli lasciare visitare le sua Nave," Skinner to Bardi, Livorno, 10 September 1672, TNA SP 98/14, f. 216r. Skinner seems to be referring to what was then the most recent outbreak of war between England and Algiers, lasting from 1669 to 1672.

Capponi, on the other hand, took care to arrive at a more diplomatic resolution of the affair, one that would at once affirm the rights of Tuscan corsairs and satisfy English demands. After seeking the consultation of the knights of San Stefano and of Malta and other legal scholars, Capponi affirmed that English ships sailing between parts of the Ottoman Empire were indeed eligible to be searched by Tuscan corsairs and that Franceschi had acted appropriately in stopping the *Lion* in order to inspect its papers. While the grand dukes had ordered Livornese corsairs not to impede English ships traveling between Great Britain and the Ottoman Empire that carried “the usuall letters from the Admiralty,” Capponi noted that this command itself required corsairs to visit English ships in order to inspect their papers.⁴³ He echoed the Grand Master of the Order of Malta when he further noted that if English ships were to enjoy the privilege of not being stopped and their papers inspected, it would create a “most grievous prejudice to Christianity, for the Turkes by hiring English ships would enjoy the free commerce of the sea,” while Christians remained subject to the attacks of Muslim corsairs. This would also put Livornese corsairs in a “worse condition” than those of “Spain, Savoy, Malta, and even of Monaco a Prince of much inferior quallity” and other Christian princes would follow the English Crown's example, such that Livornese corsairs “Would be constrained never after to take your Highnesses flag, but that of other Princes, and soe

⁴³ In similar fashion, in a letter of 16 June 1664 to Louis XIV, Nicolas Cotoner warned of the advantages that would accrue to Muslims if they were able to proceed without fear of seizure simply on the basis of displaying the French flag, “sans même honorés de Son royal passport, et les inconvénients qui naîtront de ne pouvoir visiter les vaisseaux et reconnaître leur parenté,” quoted in Petiet, *Le Roi et le Grand Maître*, 130.

your Highness would deminish the vallue and splendour of your Stendard [*e cosi l'A.V. diminurebbe lo splendore et il pregio della sua bandiera*].”⁴⁴

Mindful of the need to protect the rights of the Grand Duke and to avoid establishing any harmful precedents, Capponi nevertheless also sought to resolve the case in a manner that would not antagonize the English. In particular, he concluded Franceschi had erred when he seized English goods from on board the *Lion*, which ought to have been done “in a good and legall form,” and should thus pay damages. He also suggested a compromise that freed the captive passengers and protected the right of the Grand Duke's corsairs to search English ships by advising that Franceschi be directed to make a gift of the captives to the Duke, who would in turn set them at liberty. This solution would, according to Capponi, avoid the problems that would arise if the Duke instead “judicially obliged [Franceschi] to a restitution,” since “ther would redound too great a prejudice to the methods, and customs practised at Sea even to this day by your Highnesses Vessells, and those of others.”⁴⁵

For Capponi as much as for his English counterparts, the issues raised by the *Lion* revolved around the authority of their respective sovereigns and the “vallue and splendour” of their flags; indeed, Capponi demonstrated as great a concern for the Grand Duke's honor and the reputation of his state as for the principles of religious war that

⁴⁴ Capponi's memorial is dated 2 January 1673. All quotations from this memorial are taken from the contemporary translation in TNA SP 98/15, f. 112r-116v. Two separate copies of the Italian original are found in the same volume, f. 81r-83r and f. 84r-91v, respectively.

⁴⁵ “...che per Giustitia il Capitano Franceschi fosse tenuto alla restitutione ne risulterebbe troppo gran pregiuditio alli stili da vaselli di V.A. quanto da tutti gli altri praticati in mare,” TNA SP 98/15, f. 82r. Even so, the merchant Charles Longland, who had an ongoing case in Tuscan courts over the seizure of his goods by Livornese corsairs in 1659, cited Parker's case to demand restitution for his losses, noting that with regards to the *Lion*, “Dal Comando di S. A. S. fu fatto giustizia senza liggare.” The reference to the case of the *Lion* occurs in an undated and unsigned petition, probably from 1675, contained in ASF Auditore dei Benefici Ecclesiastici poi Segretaria del Regio Diritto, 5683.

were the ostensible purpose of the *corso*. Capponi's memorial also showed that questions of sovereignty underlay these references to honor and reputation. Drawing on conceptions of the law of nations to defend both Franceschi and the *visita*, Capponi explained that any restriction on the ability of Tuscan corsairs to search English ships was “not only a restraint of common-rights, but of the Right of People, in virtue wherof agaynst Turks, and Infidells (open Ennimys to Christians) so in per est indictum bellum; their depredation is allways lawfull, notwithstanding they bee upon Vessells of Nations in friendship with us.”⁴⁶ Placing the *corso* within prevailing views that neutral ships did not immunize the goods of belligerents from seizure, Capponi not only put religious war into a perspective rooted in the law of nations, but he also appealed to the sovereign authority of the state to legitimize the searching of English ships. Similarly, the Grand Master of the Order of Malta had earlier written to Louis XIV asking him to allow the order to continue to visit French ships, recalling how the ministers of Louis's predecessors had always responded to those pleading for restitution of goods seized by the Order, “that this Order was a Republic separate and independent from the States of France, of which their Majesty did not take any cognizance.”⁴⁷

⁴⁶ “...non solamente restrittive del Ius comune ma anco del'Ius delle genti in virtu del quale con i Turchi et infidelis inimici aperti de christianis sempre est indictum bellum, Semper e lecita La Loro depredatione etiam che siano sopra vasselli di nationi amiche, come concordemente affermano tutti i dottori e si pratica per li stili universali del mare,” TNA SP 98/15, f. 82r. The English jurist Thomas Malloy agreed and asserted that under the law of nations, enemy goods could be seized from neutral ships, *De Jure Maritime et Navale*, 2nd ed. (London, 1677), 9. On early modern conceptions of neutral rights, see Jessup and Deák, “The Early Development of the Law of Neutral Rights,” and Richard Pares, *Colonial Blockade and Neutral Rights, 1739-1763* (Oxford: Clarendon Press, 1938): 152-180. See also, Benton, “Legal Spaces of Empire,” 705.

⁴⁷ “...que cette Religion estoit une Republique separeé et independante des Etats de la France, de laquelle leur Maiestre ne prenoit aucune connoissance,” de Cottoner to Louis XIV, 31 May 1666, AOM 1588, 89-90. De Cottoner's argument that the Order was a body independent of French authority is separate from the later practice of corsairs to sail under the flag of the Grand Master as ruler of Malta, as opposed to under

While the Mediterranean *corso* ultimately rested on a basis of religious war, the interaction of Christian corsairs and English navigation raised a complicated set of intersecting questions of sovereignty, royal authority and profit. Of course, it would be too simplistic to neglect the role religion continued to play even for the English in the seventeenth-century Mediterranean.⁴⁸ In 1668 at the height of the Ottoman siege of Candia, the King's council explained the importance of religion to its decision not to grant letters of reprisal to Roger Fowke for a ship previously seized and condemned by the Order of Malta. As the council reported, “his Majestie taking into his Consideration the present State of Affaires in Christendome, & the encreasing Power of the Comon Enemy thereof against whom Maltha is so considerable a Bulwarke” had decided not to grant letters of reprisal, “or proceed otherwise for Reparation, as by the Law of Nations, he justly might.”⁴⁹ Moreover, English outrage over the seizure of ships by Livornese or Majorcan corsairs never produced outright hostilities, highlighting the fundamentally different way in which the English and other Europeans viewed their relations with the Muslim powers of North Africa compared to the norms that regulated their interaction with “civilized” powers. There is reason to think that attitudes within the regencies mirrored those in Europe. England's consul in Tunis in 1675 warned that if the English did not obtain redress for the affronts of Majorcan corsairs, “it will prove of ill Consequence, and bad Examples to the Privateers of Algier, Tunis and Tripoly, for they say it is farr more pardonable for them to take out Jews, and Strangers Goods then for the

the banner of the Order, in order to avoid papal jurisdiction over prize appeals. On this practice, see Earle, *Corsairs of Malta and Barbary*, 115-116.

⁴⁸ For an especially strong statement of this point, see Greene, “Beyond the Northern Invasion,” *passim*.

⁴⁹ Minute of resolution of the King in Council, Whitehall, 6 April 1668, TNA SP 86/1, f. 10v.

People of any Christian Prince that is att Peace and Amity with his Majesty of great Brittain.⁵⁰ If England's relationship with North African regencies was not fundamentally about religion or cultural difference, both those factors impacted how England's commercial and political relations with those polities played out.

England's wars with the regencies nevertheless centered on the same concern for the privileges and security of navigation as motivated the Crown to press for the immunity of English ships from search by Christian corsairs. The ambiguous position of the regencies in English policy comes across strongly in a speech made by the earl of Clarendon before Parliament in 1665, in which he lauded the Earl of Sandwich's expedition against Algiers of 1661 as “a designe of great glory, and equal expence,” which had resulted in “an entire submission to the English flag.” Clarendon went on to explain that another expedition had been dispatched against that regency, since “the faithless people of Argiers, who had so lately submitted to him, had committed new insolencis upon some of his Subjects, or rather upon forraigne persons taken by his Subjects into their protection, and which the Turks pretended they might doe, without violation of the Treaty.”⁵¹ Clarendon thus maintained that England would not tolerate any foreign interference with its navigation

A year after the incident of the *Lion*, John Finch similarly affirmed that the authority of the Crown over English ships precluded Christian corsairs from interfering with their passengers or cargoes. When asked by the Grand Duke how his corsairs could

⁵⁰ Francis Baker to Williamson, Tunis, 12/22 February 1675, TNA SP 71/26, f. 231r.

⁵¹ The Lord Chancellor's Speech to both Houses of Parliament, Oxford, 10 October 1665, BL MS Eg. 2543, f. 171v-172r.

recognize an English ship, considering that Muslim ships might sail under the English flag, Finch responded by noting that while English ships sailing into the Mediterranean were required to have a pass from the Admiralty, or a crew made up of at least two-thirds the King's subjects, he “apprehended the King my Masters pleasure, that His ships should be searched or stopped by none.”⁵² Finch’s insistence that corsairs refrain from searching English ships, regardless of the composition of their crew, differs from the response he had previously given a Tuscan merchant whose ship was seized by an English man-of-war during the Second Anglo-Dutch War. Finch advised the merchant that “no flag was sufficient sauvegard to any Vessel” and the validity of the prize was thus to be decided by a Court of Admiralty.⁵³ As Ephraim Skinner advised Tuscan officials, “the searching of shippes as I tell them, be their order what they will, is not to be allowed of but by those that cannot right themselves.”⁵⁴

Underlying debates over the legitimacy of the *visita* were questions of state power. Arguments that English ships ought to be immune from search accorded with neither seventeenth-century juridical opinions nor with the practice of the English navy itself. Instead, as Skinner suggested, the searching of vessels was ultimately a matter that depended on the relative power of the states involved. The negotiations that followed attacks on English ships revealed the Crown's commitment to preserving the security of

⁵² Finch to Arlington, Livorno, 10 November 1673, TNA SP 98/15, f. 65v.

⁵³ The Tuscan ship had taken on a French master and French crew before France joined the Dutch Republic in its war against England, which explains the uncertainty of whether the vessel was Tuscan or not, Finch to Arlington, Livorno, 19 February/1 March 1666 and 26 February/8 March, TNA SP 98/6. The ship was judged to be French and condemned by a prize court at Tangier, as the English Admiral Sir Jeremy Smith related in a letter from Portsmouth, of 13 May 1666, TNA SP 98/6.

⁵⁴ Skinner to Arlington, Livorno, 14 July 1673, TNA SP 98/15, f. 184v.

English navigation and its growing ability to protect its subjects' shipping. However, these negotiations also gave the sponsors of corsairs the opportunity to defend the legal and ideological bases of the *corso*. The searching of vessels thus set the growth of English state authority against the legal and customary rights of corsairs and illustrated the changing political conditions of trade in the Mediterranean.

II. *Piracy and Sovereign Authority in the Mediterranean*

During the later seventeenth century, the increasingly powerful maritime and naval powers of northern Europe reshaped the contours of trade in the Mediterranean. The evident commercial advantages that the English and French Crowns sought for their navigation by exempting it from the effects of the *corso* were in fact only part of a larger expansion of state authority over the nations' merchants and navigation in the Mediterranean. Under the Restoration monarchy, the English Crown and its representatives sought to extend their authority over English merchants and sailors, aspiring to regulate their trade more closely and to acquire a measure of jurisdiction over them even in foreign ports. Moreover, England's diplomats and consuls in the Mediterranean took any perceived imposition on English shipping to be an affront to the king and to the free commerce of his navigation. After the English reacted angrily when the Venetian fleet forced an English frigate to release a Venetian vessel it had claimed as a prize, Venice's ambassador to England, Girolamo Alberti, remarked that the “goodness and justice” Charles II and his chief ministers was not followed by others at Court who “Carried away by their natural heat they permit themselves to say that the king ought to

keep a number of war ships in the Mediterranean to enforce his rights. These gentlemen are of opinion that might is supreme and may supersede right.”⁵⁵

Alberti was only half correct: England's growing power in the Mediterranean did not simply supplant right, but rather also redefined it. As English representatives in the Mediterranean protested taxes and restrictions imposed by Mediterranean states on English ships in their waters, they implicitly and explicitly questioned the legitimacy of duties and rights that those governments argued flowed from their sovereignty. Crown authority over English navigation was a key component of the expansion of England's maritime empire into the Atlantic and (through the East India Company) the Indian Ocean. The Venetian ambassador to England, Pietro Mocenigo, would aptly reflect this view in 1671, when he reported to the Senate that England “has the Ocean for its territory [*ha quel regno per territorio l'Oceano*] where by the practice of navigation it carries on trade with the world or establishes its dominions by the mobile fortresses of its ships.”⁵⁶ However, as “islands of law” that carried state power across oceans, ships were also sites where maritime sovereignty was contested.⁵⁷ Thus, John Finch warned that the seizure of an English ship by the farmers of a maritime duty claimed by the Prince of Monaco amounted to the “dangerous beginnings of an Honorable Piracy.”⁵⁸ Finch reminded that

⁵⁵ Girolamo Alberti to Doge and Senate, 13 October 1673, in the *Calendar of State Papers and Manuscripts Relating to English Affairs in the Archives of Venice*, vol. 38, 1673-1675, ed. Allen B. Hinds (London: Longman, Green, 1947), 139.

⁵⁶ Mocenigo to the Senate, 9 June 1671, *Calendar of State Papers and Manuscripts Relating to English Affairs in the Archives of Venice*, vol. 37, 1671-1672, ed. Allen B. Hinds (London: Longman, Green, 1939), 55.

⁵⁷ For this point, see especially Anne Pérotin-Dumon, “The Pirate and the Emperor” and Lauren Benton, “Legal Spaces of Empire: Piracy and the Origins of Ocean Regionalism.”

⁵⁸ John Finch to Arlington, Livorno, 3/13 February 1668, TNA SP 98/9.

Prince of England's recent wars against the North African corsairs, warning him that his king would hardly scruple "to proceed in the same manner with any Christian Prince, which on the European coast should pretend any Dutyes upon the ships belonging to his Subjects, so much against the Dignity of his Majestie who in this world acknowldges nothing superior to himselfe, but almighty god."⁵⁹ While Monaco had long claimed the duty in question, Finch questioned the "Legality and Justice of all such Pretensions" and further advised Arlington that a single frigate could "Carve out full Satisfaction."⁶⁰

At the base of Finch's complaint against the Prince of Monaco was the perception that impositions on English navigation violated the King's authority over his subjects and their shipping overseas. While both the Prince of Monaco and the sponsors of corsairs claimed sovereign authority to tax or search English ships under certain conditions, the English sought to redefine the legal organization of trade in the Mediterranean. The dispute between Finch and the Prince of Monaco mirrors a contemporaneous dispute between France and Savoy over the analogous *diritto di Villafranca*, which was a duty collected by the dukes of Savoy on ships passing Villefranche and originally intended to fund galleys and fortresses to defend the coast from attack by Muslim corsairs.⁶¹ In 1660,

⁵⁹ "Copy of John Finch's Letter in answer to the Prince of Monaco," Pisa, 1/11 January 1668, TNA SP 98/8, f. 1v-2r. For background on the duty, granted by both imperial and French patents, and imposed on small ships passing by Monaco's coast in order to fund defences against Muslim corsairs, see Henri Métiévier, *Monaco et ses Princes*, 2nd ed. (La Flèche: E. Jourdain, 1865), 320; Michel Bottin, "Le Droit de Villefranche" (PhD Diss., Université de Nice, 1974), 13-14.

⁶⁰ "Copy of John Finch's Letter in answer to the Prince of Monaco," Pisa, 1/11 January 1668, TNA SP 98/8, f. 2r and Finch to Arlington, Livorno, 3/13 February 1668, *ibid.*, f. 42v. Finch eventually negotiated a payment of reparation to the concerned ship's master, which the Committee for Foreign Affairs took to settle the matter, since "the point is gott in a reparation" Minute of the Committee of Foreign Affairs, Whitehall, 29 November 1668, TNA SP 104/176, f. 89v.

⁶¹ The *diritto di Villafranca* was granted to the dukes of Savoy by both imperial and papal patents and had been confirmed by treaties. On this duty, see Michel Bottin, "Le Droit de Villefranche," 19-24; Luca Lo

the ministers of the Duke of Savoy laid out their advice for his response to the complaints of the French ambassador over the seizure of ships for contravening the duty. The ambassador demanded that the ship be restored and that the farmers of the duty be handed over as prisoners together with their goods, which were assumed to be the loot of their “thefts.”⁶² In response, the ministers of the Duke of Savoy advised that the *diritto* was an “effect, and mark of the sovereignty, that Your Royal Highness justly possesses in the maritime tract adjacent to your states.”⁶³

When consuls and ministers labeled Mediterranean corsairs as “pirates,” they denied that foreign vessels and the sovereigns who granted their commissions had the legal authority to interfere with English navigation. Thus, in 1686, after a Savoyard corsair, the Marquis de Fleury, sailing under a commission from the king of Poland, seized the English ship *Jerusalem*, which was carrying Ismael Pasha of Tripoli and his retinue and took it into Malta, the English accused him not merely of dishonoring English navigation, but also of piracy.⁶⁴ A year later in 1687, Trinity House blamed this “Pirate,”

Basso, *In traccia de' legni nemici: corsari europei nel Mediterraneo del Settecento* (Ventimiglia: Philobiblon Edizioni, 2002), 65-67.

⁶² “...che si restituiscano dette prese, con ogni altra, che si troverà fatta per il passato, et che si diano prigionieri detti Cavallieri con loro robbe, presuponendoli rei di molte rubbarie,” “Copia di parere de Ministri de S.A.R. per Le contese del dritto di Villafranca colli Francesi,” 14 June 1660, Archivio di Stato di Torino (AST) Contado di Nizza, Diritto di Villafranca, Prima Addizione, Mazzo 1, Fascicolo 7.

⁶³ “Esser’ il dritto di Villafranca effetto, e marca della sovranità, che V.A.R. giustamente possiede nel tratto maritimo coerenti á suoi stati,” *ibid.* Savoy would continue to insist on payment of the *diritto* through the eighteenth century; the Comte de Chavannes responded to Dutch objections to the duty by reiterating, “on ne peut légitimement disputer l'exaction d'un Droit á un Souverain, qui outre la Possession, la Propriété et le Domaine actuel qu'il se maintient sur les Mers adjacentes á ses Etats, ou il est imposé, se trouve encore de plus en possession de le faire exiger de toutes les Nations indistinctement,” *Memoire du Comte de Chavannes, Ministre du Roi, remis le 31 May 1741*, AST Contado di Nizza, Dritto di Villafranca, II Addizione, Fascicolo 15. Both England and France abrogated the duty through lump sum payments in the mid-eighteenth century, see Bottin, “Le droit de Villefranche,” 80-82, 156-157.

⁶⁴ When Fleury captured a Venetian ship in 1672, the republic dispatched warships to capture him, bringing him back to Venice, where he was sentenced to death but released on the request of various Catholic rulers,

at least in part, for the difficulties English ships were encountering in finding freights in foreign ports, but were confident that the steps James II had taken to prosecute him and obtain restitution of the pasha's losses would “advance the credit of our Navigation abroad to a greater height than it hath yet been.”⁶⁵

The Crown's response to Fleury's attack on the *Jerusalem* illustrated its view of the illegality of such actions. When James II failed to secure diplomatically the restitution of the pasha's goods from Gregorio Carafa, the Grand Master of the Order of Malta, he dispatched three frigates under the command of Henry Killigrew to the Mediterranean to hunt down Fleury and to obtain the return of the pasha's goods.⁶⁶ After Fleury subsequently sailed to the Savoyard port of Villefranche, Thomas Kirke, the English consul in Genoa, wrote to Victor Amadeus II, the Duke of Savoy, to advise him that Fleury's actions were against the law of nations and to warn him that James II would find his honor “very interested in this affair, as sovereign of the Marine, that anyone of whatsoever Condition, whoever he is, will presume to disturb, or prejudice any of his subjects carrying his flag.”⁶⁷ Departing for Constantinople a year later, William

Robert Saulger, *Histoire nouvelle des anciens duc et autres souverains de l'Archipel* (Paris, 1698), 306-309; Géraud Poumarède, *Pour en finir avec la Croisade: Mythes et réalités de la lutte contra les Turcs aux VVI^e et XVII^e siècles* (Paris: Presses Universitaires de France, 2004), 483-484. Skinner may have had this incident in mind when he advised Arlington that if the king could not obtain satisfaction from the Grand Duke in the affair of the *Mediterranean*, there would be “noe way like what the Venetians in such like cases commonly practise, to give strick & secrett orders to a frigate or 2 to find Signore Dominico Franceschi out, & bring him dead or alive into England” to discourage corsairs in the future and “secure the honour of our navigation,” Skinner to Arlington, 30 August/9 September 1673, TNA SP 98/15, f. 202v.

⁶⁵ “Report of the Trinity House to the King touching the grounds of the present publick evill of soe great numbers of his seamen found in the service of foreign states, and the remedies by them proposed thereto,” 28 July 1687, Bodl. MS Rawl. A 171, f. 162v.

⁶⁶ D.F. Allen provides a narrative of these events in “James in Pursuit of a Pirate at Malta,” *The British Library Journal* 16, no. 2 (Autumn 1990), 109-116.

⁶⁷ “...qualle Ladromania essendo Contro, Gius gentium sua sacra M[aestà]. ... essendo Informato, e trovano il suo honore molto Interessato In questo affare, Come sovrano della Marina, che alcuno di qualsivoglia

Trumbull, England's new ambassador to the Ottoman Empire, was entrusted with a letter to the Grand Vizier documenting the English Crown's response to Fleury's "Piracy," and assuring the Ottoman minister that "in vindication of Our owne Honor and Justice, and to show the detestation We alwais beare to such Enemys of the Common Peace of Mankind, We have by Our Ships of Warr now in the Mediterranean Seas, and by Our Ministers at the Courts of Christian Princes in those parts prosecuted the Pirates to the utter destruction of him and his Ship."⁶⁸

The letters of Kirke and James II expand on the complaints earlier directed against Franceschi by asserting that the violation of English navigation and of England's treaty-based trade to the Ottoman Empire constituted an act of piracy. Both the English and the French demanded that their free commerce with the Levant take precedence over the practices of corsairs. Louis XIV and Colbert argued that ships of the Order of Malta should not seize Muslim passengers or goods from French vessels ships, in part, on the basis that France's treaty with the Ottomans had established reciprocal free commerce between the two powers.⁶⁹ In the early eighteenth century, French ministers further

Conditione, sia chi, si sia, presumerá di disturbare, ó pregiudicare alcuni de suoi suditi portando sua Bandiera," Thomas Kirke to the Duke of Savoy, 11 March 1687, AST Lettere Particolari, mazzo 111.

⁶⁸ "Copy of King's Letter to the Vizier Azem," 9 April 1687, BL Add. MSS 72550.

⁶⁹ Baili de Souvre to the Grand Master, Paris, 30 April 1666, NLM AOM 1214, p. 337. See also McCluskey, "Commerce before Crusade?," 7. When the Estates General of the Dutch Republic wrote the Grand Master in 1663 to complain of the seizure of the *Empereur Octavian* by a Maltese vessel, they noted that the ship's owner had believed that he would not be subject to search based on the "Natural advantage of Commerce," as confirmed by the Republic's treaties with both the states of Europe and corsairs of North Africa, "Le patron de ce Navire, croyant se pouvoir servir de l'avantage Naturel du Commerce, confirmé pas les traittés, que cet Estat a avec tous les Rois de l'Europe, et mesme par celui que nous avons conclu avec les Corsaires de Barbarie de pouvoir charger toutes sortes de Marchandises, a la reserve de celles de Contrebande, Sans estre Sujets a visite," 1 December 1663, NLM AOM 1201, f. 115r. Such appeals to the reciprocity of the Capitulations contrasts with the Ottoman understanding of these documents as unilateral legal grants of protection to foreign residents within that empire. On this point, see Edhem Eldem, "Capitulations and Western Trade," in *The Cambridge History of Turkey*, vol. 3, *The Later Ottoman Empire, 1603-1839*, ed. Suraiya Faroqhi (Cambridge: Cambridge University Press, 2006), 294.

suggested that the treaties of Europe's maritime power created a body of public law [*droit public*] that even countries that were not party to those treaties ought to observe.⁷⁰

Ephraim Skinner similarly argued that the best principle for England to observe with regard to Tuscan corsairs would be, “as we will not allow our ships to be searched by the Turks for Christians soe neither the Turks nor their goods to be taken out of them, which will alsoe seeme to salve the Grand Duke's honour in giveing out new orders, finding that to be the only difficulty.”⁷¹ When Fleury brought the *Jerusalem* into Malta, the Chevalier de Bataille, who seems to have acted as an unofficial agent for the English at Malta, argued along these lines that the ship, its passengers and cargo should be freed. Opinions differed as to whether or not corsairs were permitted to visit English ships. According to Bataille, the Spanish, Italians and Germans argued that the English Crown had never declared that English ships were not to be seized if carrying Muslims; meanwhile, he held that the French view seemed correct on grounds of equity, in as much as if the Knights or those of any nation “have enjoyed the privilege, that embarking on vessels of France, or of England, the Turks are unable to seize them or do them any

⁷⁰ When the French ambassador to Savoy appealed against the enslavement of Muslim passengers from a French ship that sank off the coast of Sicily in 1716, he argued for their release based on, “Les maximes du droit Naturel, les Regles du droit des et les *dispositions du droit public tel quil est expliqué dan les traittez et Observé par les puissance Maritimes de Europe* [my italics],” “Memoire remis par Monsieur Le Marquis de Prye Ambassadeur de france le 10^e Mars 1717 concernant les Turcs arrestés en Sicile,” Parere dell Avvocato Generale Zoppi á S.M. delli 15 Marzo 1717, AST Contado di Nizza, Porto di Villafranca, mazzo 4. On the other hand, an opinion delivered by Savoyard ministers on the matter denied that the French flag alone could provide security for those sailing under it, “Se poi s'intende di ricever le prerogative dalla Bandiera, si risponde che la sicurezza delle persone e robbe nemiche tutta dipende da Trattati, e senza d'essi la bandiera non sarebbe ne pur bastante ad assicurarle ancorche si trovassero sovra la nave,” Parere à Sua Maestà delli Presidenti Ricardi, Graneri, et Avvocato Generale Zoppi sovra li Turchi naufraggiati sovra le spiagge di Sicilia, 24 May 1717, *ibid*.

⁷¹ Skinner to Arlington, Livorno, 7/17 July 1673, TNA SP 98/15, f. 177r.

wrong; the same privilege ought it seems to be in favor of Turks who put themselves with good faith under the said flags.”⁷²

These arguments sought to establish that Crown authority over navigation and commercial reciprocity between England and the Ottoman Empire invalidated Fleury's actions, but they actually did little to help James II to obtain the release of Ismael Pasha's goods and fellow passengers. The King of Poland, who had commissioned Fleury and was at war with the Ottoman Empire, maintained that Fleury had not committed any “piracy” but rather had been engaged in holy war and invited any Englishmen concerned in the matter to bring their case before him and his tribunals.⁷³ Meanwhile, Grand Master Carafa explained that he was unable to restore the goods left by Fleury since it would not be right for him to do so, “much less to use any act of sovereignty on ships with Royal Flags,” nor could he interfere in the affair, “least I might be said to assume to my Selfe too great authority over the absolute and independent Rights of Kings, whom I humbly reverence as the Guardians and Protectors of this Order.”⁷⁴ Apparently, only the arrival of Killigrew's flotilla convinced Carafa of the weight of English arguments that Fleury's

⁷² “...et apparemment ciluy des françois est le meilleur et estably sur l'Equité; en ce que; si les Chevaliers de Malte, et toutte altre Natione ont et iuiissent du privilege, que s'embarquant sur des vaisseaux de france; ou d'angleterre, les Turcs ne pouvent les arrester ny leur faire aucun tort; le même privilege doit ce semble estre aussy en faveur des Turs qui se mettent de bonne foy sous les susdits Pavillons,” 18 January 1687, TNA SP 86/2, f. 21r-v.

⁷³ “...quale sotto il nostro stendardo milita in Mare contro i nemici di Cristianità esercitando non la Piractica, mà la Sacra militia,” “Copia di lettera scritta dal Rè di Polonia al Rè d'Inghilterra,” AST Contado di Nizza, Magistrato del Consolato di mare, Rappresentanze e Pareri di Magistrato, 1629-1717, f. 41r. The folder also contains the Latin copy of this letter, f. 39r (militans non Piracticum, sed militiam sacram) and Latin and Italian copies of Fleury's commission from the King of Poland. The Cavaliere Bataille reported that the Polish resident in Paris thought the prize “bien fait et que la prise estoit bonne,” TNA SP 86/2, f. 21r.

⁷⁴ Carafa to James II, 29 November 1686, TNA SP 85/12, f. 125r-v. The Latin original of this letter is in TNA SP 86/1, f. 69r-v.

patent was invalid.⁷⁵ The Grand Master ordered that Ismael Pasha's goods be turned over to the English and subsequently assured Trumbull that he had given orders “that none carrying the Banner of Malta should any wayes disturbe the Commerce of his Majeties Subjects or search their ships.”⁷⁶

While the Grand Master ultimately gave in to English demands, his earlier contention that the matter of the *Jerusalem* was one best resolved between the kings of England and Poland reflected the legal arguments previously put forward by Capponi. As in the case of the *Lion*, early modern jurists generally viewed enemy goods taken off friends' ships as a legitimate prize; Kirke's accusation that Fleury had acted against the law of nations thus appears either uninformed or based upon the assumption that the corsair was acting without legitimate authority. Conversely, when the Consolato del Mare of Nice considered whether Fleury's ship was to be confiscated after its arrival at Villafranca, it delivered an opinion that echoed the Grand Master. The jurists argued that since Fleury had sailed under the standard and in the service the King of Poland, it would be no more just to turn the ship over, than “it would be for a Neutral Prince to concede a reprisal to the disgust of an Friendly Prince in order to please another.”⁷⁷ The Duke of

⁷⁵ Carafa to Ambasciatore Sacchetti (in Rome), 25 March 1687, NLM AOM 1454, f. 53r: “che ci hà fatto ancora impressione, L'asseverante preteso del S. Ambasciatore circa La falsità delle Patenti di Polonia, dandoci à credere, ch'egli non lo dica senza qualche fondamento.”

⁷⁶ Trumbull to Sunderland, Malta, 29 June 1687, TNA SP 97/20, f. 91v.

⁷⁷ “...trattandosi d'una Nave protetta dal stendardo del Re di Polonia sotto il quale e per il quale militava non potrebbe esser piu giusta la remissione d'essa á chi la proseguisse de quello, che sarebbe giusto il concedersi una rapresaglia da un Prencipe Neutro, in odio d'un Prencipe Amico per compiacer all'altro,” 6 February 1688, AST Contado di Nizza, Magistrato del Consolato di Mare, Rappresentanze e Pareri di Magistrato, 1629-1717. With regards to neutrals and reprisals, Molloy wrote that ships or goods taken by virtue of a letter of reprisal and brought into a neutral state, without having been first made good by the courts of the prince who had issued the letters, could there be seized by the original owners, *De Jure Maritimo et Navali*, p. 22

Savoy subsequently explained to his envoy to London, the Conte Rovere, that while he desired to provide satisfaction to the English king he could not in good conscience and with justice return the ship after receiving the opinion of the Consolato.⁷⁸

The English response to Fleury's seizure of the pasha of Tripoli from the *Jerusalem* exposed both the extent and limitations of the power of the English state in the Mediterranean. While the English state sought to extend its authority into the Mediterranean through privileges it demanded for English navigation and merchants, the reaction of Mediterranean princes and their ministers to English demands reveal the extent to which they shaped the evolution of the early modern Mediterranean in a direction that contrasted with English expectations. The complexity of this situation comes across strongly in the negotiations that followed the same Domenico Franceschi's seizure of goods and members of the retinue of Ali Pasha of Tunis off the English-flagged ship *Mediterranean* in 1673.⁷⁹ The Levant Company feared that it would be forced to pay compensation for the pasha's losses and directed Sir John Finch, England's

⁷⁸ "Istruzione al Conte Rovere mandato in Inghilterra per contrularvisi nella Nascita del Principe di Galles, 1688," AST Materie politiche per rapporto all'estero, negoziazioni, negoziazioni coll'Inghilterra, Mazzo 1, f. 25. In 1689, Consul Kirke wrote to the Earl of Shrewsbury to report that Fleury's ship was sailing to England and to urge that it be seized. Kirke recounted that James "was very much disgusted & exasperated & would have had his revenge of said Duke, if hee had remained at the helme, for him sligteing his demand's, & the affront putt on our Navigation, as also the great prejudice our Natione received in this action, by the Piracy of said Dukes Subject Flury, meriting a most Severe chastisement." It does not appear that anything came of Kirke's letter, especially as the English government would not want to offend an important ally in its war against France. Thomas Kirke to Earl of Shrewsbury, Genoa, 10 December 1689, TNA SP 79/3, f. 99r.

⁷⁹ The Ottoman official is referred to as Ali Pasha in the European sources and, according to the English merchant Humphrey Sidney, had left Tunis in anticipation of the power struggle that was waged through the summer of 1673 between local and "Turkish" faction, see Sidney, Livorno, 9/19 June, 1673, TNA SP 98/15, f. 172r. For the political situation of seventeenth century Tunis, see Jamil M. Abun-Nasr, "The Beylicate in Seventeenth-Century Tunisia," *International Journal of Middle East Studies* 6, no. 1 (Jan. 1975): 70-93.

new ambassador to the Porte, to obtain the restitution of the pasha's goods.⁸⁰ Finch similarly worried about the effects of Franceschi's actions and further saw the attack on the *Mediterranean* as an affront to the Crown. He accordingly wrote to Lord Arlington that "the Honour of His Majesty is greatly concerned His Navigation of necessity falling into a Low esteem in the Mediterranean, when the Ships of His Subjects cannot Protect their goods they carry from the Insolency's of Christian Pirates."⁸¹ Finch proceeded to enter into negotiations with the Genoese (as a Corsican, Franceschi was a subject of that republic) and with the Grand Duke of Tuscany in order to seek the return of Ali Pasha's goods and "to make an exemplary demonstration of him."⁸² Skinner further advised his superiors that if the Crown could not obtain satisfaction from the Tuscans, it should dispatch a frigate to hunt down Franceschi and bring him "dead or alive" to England.⁸³

The Genoese response to Finch's demands that Franceschi be punished by his native sovereign similarly illustrated the complexities of subjecthood and sovereign responsibility in the early modern Mediterranean world. Like its Tuscan counterpart, the Genoese government sought to appease an excitable English minister while also preserving its own honor and sovereignty. In order to demonstrate to Charles II that "the Republic does not miss any occasion to meet his every pleasure," the Genoese government accordingly ordered the Magistrato di Corsica to proceed against Franceschi

⁸⁰ Directors of the Levant Company to Finch, London, 28 July 1673, TNA SP 105/113, 365-366.

⁸¹ Finch to Arlington, Genoa, 6 September 1673, TNA SP 79/2.

⁸² "...per farne esemplare dimostrazione," ASG Archivio Segreto, Trattati con Ministri d'Inghilterra et Olanda 1/2758, "Ristretto del Negoziati, e risposte passate coll'Ambasciatore Finch Inglese," 7 September 1673.

⁸³ Skinner to Arlington, 30 August/ 9 September 1673, TNA SP 98/15, f. 202v.

on the basis of the Genoese statute “quod nemo piraticam exerceat” of 1556, which forbid any Genoese citizen or subject from engaging in piracy, “unless coerced or with the permission of the Senate.”⁸⁴ However, the Magistrato di Corsica responded by noting that it had been caused “qualche perplessità” in considering how to carry forward the case against Domenico Franceschi. Although Franceschi was a native of Corsica and thus a subject of the Genoese republic, he had lived for many years in Livorno and since he had sailed under the grand duke's flag “it does not seem possible to say he is a pirate [*non si possa dire pirata*], that is a thief of the sea, when he acted under the authority of a Prince, of whom he may be called a subject by reason of his domicile, going in *corso* as a Dependent of that Prince whose flag he has.”⁸⁵ In response, the Giunta della Marina advised that the case against Franceschi be carried forward, since “Justice obligates the subject wherever he is.”⁸⁶ Moreover, according to the Giunta, since the statute forbade Genoese subjects from willingly serving as corsairs under other states, the prosecution of Franceschi should go forward in any case. Although Genoa proceeded against Franceschi at the insistence of Finch, it did so entirely according to its own laws and regulations.

⁸⁴ “...affinche S. Maestà riconosca non trascurar La Repubblica alcuna occasione d'incontrare ogni sua maggiore soddisfazione,” “Ultime risposte dà darsi per mezzo degli eccellentissimi Deputati all'Ambasciatore del Rè Britannico,” 11 September 1673, ASG Archivio Segreto, Trattati con Ministri d'Inghilterra et Olanda 1/2758. The full statute, “quod nemo piraticam exerceat, nec furetur in littore maris,” may be found in Jean-Marie Pardessus, *Collection de Lois Maritimes Antérieures au XVIIIe. Siècle*, vol. 4, *Droit maritime des Pays-Bas méridionaux et septentrionaux, de l'Angleterre, de la France, de la république de Gênes, de Pise et de Florence* (Paris, 1837), 524. The relevant section reads: “qui contrafecerit, laqueo suspendatur, et ad ablati restitutionem teneatur, nisi probaverit coactus fecisse, aut Serenissimi Senatus permissione.”

⁸⁵ “...e che va da corseggiando con stendardo, ò sia bandiera del Gran Duca, per il che pare non si possa dire pirata, che è l'istesso che ladro del mare, mentr'egli fà ciò con autorità di Principe, del quale ratione domicilij si può dir suddito corseggiando come Dipendente da quel Principe del quale, hà lo stendardo,” Magistrato di Corsica to the Serenissimi Collegi, 7 November 1673, ASG Archivio Segreto, Maritimarum 1671, 1673-1675.

⁸⁶ “...è assai Commune l'opinione che la Ratione oblihi il suddito ovunque si trovi,” Giunta della Marina to the Serenissimi Collegi, 15 November 1673, *ibid.*

Indeed, in banishing Franceschi for actions he committed while under the commission of the Grand Duke of Tuscany, the Genoese government reaffirmed its authority over one whose subjecthood was ambiguous.

While both the Genoese and Tuscans would go to great lengths to satisfy Finch's demands, their responses also show similar care that they not infringe upon their own dignity or sovereignty. Ferrante Capponi ensured that the resolution of the case of the *Lion* protected the honor and authority of the grand duke and the rights of his subjects. When Cosimo III wrote to Charles II to convey the results of the matter, he affirmed that the *Lion's* Muslim passengers were held to be "lawfully taken."⁸⁷ However, following Franceschi's attack upon the *Mediterranean*, Conte Bardi assured Skinner that the grand duke had received the news with great displeasure, "His Highness intending that whoever sails under his flag should proceed with every respect and rectitude according to the agreements already established, toward who carries the standard, and Patent, of His Britannic Majesty."⁸⁸ Sending letters to both the governor of Livorno and to the grand master of the Order of Malta, Cosimo III requested that Franceschi's ship and property be sequestered in anticipation of any damages he might be obligated to pay.

Despite the Grand Duke's readiness to address English requests over the *Mediterranean*, it is clear that the Tuscans approached the matter more carefully than the

⁸⁷ This is from the contemporary English translation of the letter of the Grand Duke to Charles II of 11/21 January 1673, TNA SP 98/15, f. 121r. The Italian copy reads "eran stati Legittimamente con tutti il loro havere predati," *ibid.*, f. 122r.

⁸⁸ "...premendo S.A., che da chi naviga con la sua bandiera, si proceda con ogni rispetto e rettitudine, e secondo i concerti gia stabiliti verso chi porta stendardo e Patente di S.M.Brittanica," Bardi to Skinner, Florence, 9 July 1673, TNA SP 98/15, f. 179r.

English reports would suggest.⁸⁹ When Capponi turned to the case of the *Mediterranean*, he again sought to confirm the sovereign authority of the grand duke with regards to the conduct of his corsairs and to defend him from accusations that he was insufficiently attentive to the well being of English navigation. A set of instructions among the papers of Capponi advised the recipient that the English now claimed that their vessels should be able to carry Muslim passengers and their goods free from the interference of Tuscan corsairs, and that while this was a pretension “that can Cause many disorders, and prejudices for [our] navigation,” the grand duke did not wish to challenge it as long as the ships carried the English flag and letters and patents from the Lord High Admiral. However, there were grounds for suspicion with regards to the *Mediterranean*, since the ship had sailed from Livorno and the master, an Englishman named Thomas Chappel, was himself a resident in that city and could thus be considered a Tuscan subject. The recipient of the letter was instructed, upon the return of the ship to Livorno, to establish its provenance and whether it really carried the English flag and necessary papers from the Admiralty.⁹⁰ Upon the subsequent inspection of the vessel, it was indeed found that the ship had not been built in England and that the patent from the English Admiralty that it claimed to carry had been given to it only after the ship returned to Livorno.⁹¹

⁸⁹ In a letter to the Tuscan resident at London, Francesco Terriesi, the Grand Duke complained that the English were too quick to complain of his reaction to Franceschi's actions, “le doglianze sopra ogni incerto supposto, converrebbe prima à fondar impressione, accertarsi della sussistenza delle cose,” 19/29 August 1673, TNA, SP 98/16, f. 188r-v.

⁹⁰ “Scritture attenenti al Capitano Domenico Franceschi à causa della presa della Nave Mediterraneo,” ASF Auditore dei Benefici Ecclesiastici poi Segretaria del Regio Diritto, 5683. This letter is unsigned and undated. However, it seems probable that it is a set of draft instructions to Tomasso Cepperelli, secretary to the Consoli del Mare of Pisa, who was assigned to make an inquiry into the case of the *Mediterranean* and to inspect the ship and interrogate its crew. On Cepperelli's inquiry, see the copy of the letter from Bardi to the governor of Livorno, 6 September 1673, TNA SP 98/15, f. 108r-110v.

⁹¹ Capponi to Marucelli, 28 September 1673, ASF Mediceo del Principato, 1744.

Capponi's report on the affair stressed that, according to the articles for Livornese corsairs, Franceschi could legitimately argue that the *Mediterranean's* Muslim passengers and their goods were good prize.⁹² Meanwhile, Skinner reported rumors that the *Mediterranean's* crew had participated in the pillaging of the cargo and Capponi would later find evidence that there were grounds to suspect collusion between Franceschi and the captain of the *Mediterranean*.⁹³ The officers of the Levant Company similarly warned Finch of the incriminating news that after Franceschi had removed the *Mediterranean's* cargo the ship had sailed peacefully away in the company of his vessel.

Despite the legal grounds to support Franceschi, Cosimo III carried through on his promise to restore to Ali Pasha those goods that Franceschi had brought into Livorno and left at Malta, though their value was a fraction of that which the pasha and Finch had initially claimed were seized. However, English efforts to condemn Franceschi's behavior as the straightforward violation of the privileges of English navigation revealed the political and legal complexities of the early-modern Mediterranean. Lines of state authority overlapped in a sea marked by its sheer array of sovereign entities and by merchants and mariners who moved readily from one sovereign to another. When

⁹² "Relazione per mandarsi in Inghilterra dettata dall Illustrissimo signore Auditore li 10 Novembre, 1673," ASF 1824, #12, f. 5r. Capponi here also reaffirms his earlier verdict in the case of the *Lion*, "poteva legittimamente il Capitano Franceschi sostenere essergli stato lecito il predare i Turchi, e le robe di esser, che erano sopra da Nave Mediterraneo, non venendo vietato à predetti Corsari di prede i Turchi, e robe loro, se non sopra i veri Vascelli Inglesi quando haveranno le solite lettere dell'Ammiraglià, e quando di Turchia navigano per li stati della Gran Bertagna, e dalli stati del suddetto Rè per Costantinopoli, ó altre parti di Turchia."

⁹³ Skinner to Arlington, Livorno, 9 September 1673, TNA SP 98/16, f. 202r; Directors of the Levant Company to Finch, London, 28 July 1673, TNA SP 105/113, p. 366; Capponi to Marucelli, Villa all'Imperiale, 28 September 1673, ASF Mediceo del Principato, 1744. Skinner later reported that upon the inspection of the *Mediterranean* at Livorno, Chappel was found "clear beyond Our owne expectation, nothing being found in her but a few trifles taken from the Common Seamen by the Commander himselfe," Skinner to Arlington, Livorno, 23 September 1673, TNA SP 98/16, f. 208r.

English representatives claimed that Chappel was a subject in command of an English ship, they extended the protection of the English state to him and his ship. Yet, the multinational captain and crew of the *Mediterranean* made it unclear to which nation the ship really pertained or which state had responsibility for it. Although Tuscan officials decided to treat the ship as English, their attention to the details of its passes and of the nationality of its crew highlighted the fact that the benefits of the English flag were theoretically limited to ships that were truly “English.” The ambiguity of what constituted an English ship provided room to affirm or contest the authority of the English state in the Mediterranean. Moreover, while English officials might preoccupy themselves with the condition of English navigation, the captains and crews of ships hardly shared this concern.⁹⁴

The Crown's efforts to protect English navigation extended its sovereign claims to encompass the security of ships in overseas waters, but simultaneously limited its ability to regulate subjects' shipping in the Mediterranean. Finch was still able to conclude his negotiations in Florence successfully. The Venetian resident at Florence reported Cosimo III's desire to satisfy the English demands over the *Mediterranean* and “to avoid any ill feeling which might arise from the warmth with which the ministers of that king conduct affairs.”⁹⁵ Tellingly, in its opinion on the Marquis de Fleury, the Consolato del Mare of

⁹⁴ Thomas Platt, Skinner's successor as the English consul at Livorno, warned in 1676 that the merchant David Sidney, the owner of the *Mediterranean*, had acquired some Venetian vessels that he intended to pass off as English, although only English built ships and foreign ships “made free” were eligible for Admiralty passes. This suggests that Sidney was continuing to sponsor the same behavior that had led to England's difficulties with the Grand Duke three years before, Platt to Williamson, Florence, 25 April/5 May 1676, TNA SP 98/16, f. 245v. Sidney defended his actions by relating that he had bought these foreign ships during the third Anglo-Dutch War when English ships were unavailable in the Mediterranean, as he explained in a letter from Livorno of 7/17 October 1676, TNA SP 98/16, f. 285r.

⁹⁵ Giovanni Giacomo Corniani to the Doge and Senate, Florence, 7 October 1673, in the *Calendar of State Papers and Manuscripts Relating to English Affairs in the Archives of Venice*, vol. 38, 1673-1675, 133.

Nice noted that its own reasoning on the case rested only on the legal questions of the affair, refraining from considering “those more urgent military and political motives that might prevail.”⁹⁶ At a time when Cosimo III was working to encourage trade through the port of Livorno, he was naturally disinclined to displease the English, who were vital to Livorno's commercial success.⁹⁷ The Grand Duke's commitment to Livorno's commercial development put his sponsorship of the *corso* in a delicate position.⁹⁸ Rumors that Franceschi planned to surrender the Tuscan flag in order to free himself from orders to restore Ali Pasha's goods led that government to weigh the difficulties associated with commissioning corsairs. Capponi wrote that it seemed best to order the corsair to surrender the flag, “since in that way the restitution [of it] would appear more decorous than if it were heard that Franceschi had renounced it,” but it was to be made clear to Franceschi that he would remain accountable for the goods seized from the *Mediterranean*.⁹⁹

⁹⁶ “...rimettendoci a quei piu urgenti motivi militari e politici che potessero prevalere,” 6 February 1688, AST Contado di Nizza, Magistrato del Consolato di Mare, Rappresentanze e Pareri di Magistrato, 1629-1717.

⁹⁷ On this point, see especially Carlo M. Cipolla, *Il burocrate e il marinaio: La <Sanità> toscana e le tribolazioni degli inglesi a Livorno nel XVII secolo* (Bologna: il Mulino, 1989), chap. 9, “Sic transit gloria mundi.”

⁹⁸ There were suggestions that the Grand Duke suspend the activity of Livornese corsairs altogether in order to promote peaceful trade with the Levant. Cosimo III asked also Finch how Tuscany might open direct trade relations with the Ottoman Empire while preserving its sponsorship of corsairs, Finch to the Grand Duke, Constantinople, 14/24 February 1675, ASF Auditore dei Benefici Ecclesiastici poi Segretaria del Regio Diritto, 5683; Romano Canosa, *Storia del Mediterraneo nel Seicento* (Sapere 2000: Rome, 1997), 388.

⁹⁹ Capponi explained that the government would order Franceschi to surrender the Tuscan flag “perche in questa forma la restituzione sarebbe più decorosa, che sentirsi, che dal Franceschi fusse renunziata,” Capponi to Panciatechi, Florence, 9 Dec. 1673, ASF: Mediceo del Principato 1744. Skinner reported rumors that Franceschi had taken Maltese colors in his letter of 7/17 July 1673, TNA: SP 98/15, f. 177r.

Despite the ability of English diplomats to obtain restitution of goods seized off English ships, the fact that these negotiations played out through a language of sovereignty and princely authority highlighted the limits to the reach of English power in the Mediterranean. Crown claims over English subjects and navigation collided with the equally significant arguments of Mediterranean polities to preserve their own rights and duties unchecked. While the English could demand satisfaction, their diplomatic and commercial leverage proved limited, especially when dealing with European princes. Finch and the Crown seem to have seriously considered resorting to force to obtain satisfaction for the ship seized by the customs farmers of the Prince of Monaco. They refrained from doing so since such a course of action would have antagonized France.¹⁰⁰ Killigrew's orders forbid him from using force against Fleury or his ship within any Christian port.¹⁰¹ It does not appear that a single "pirate of the Mediterranean" was ever brought before the High Court of Admiralty. Indeed, despite Skinner's recommendations that a frigate be dispatched to hunt down Franceschi, the Venetians appear to have been the principle pirate hunters of the Mediterranean, capturing Fleury early in his career and

¹⁰⁰ Finch's threats do not appear to have been empty rhetoric. Lord Bridgeman wrote to Williamson on July 19 1668, noting that Sir Thomas Allin had been instructed to "demand reparation" from the Prince of Monaco and in case of refusal "to take it." However, Bridgeman noted that because Monaco was under French protection and worried that given these instructions, "I cannot see how a war with France can be avoided," *Calendar of State Papers Domestic: Charles II*, vol. 8, 1667-1668, ed. Mary Anne Everett Green (London: Longman, Green, 1893), 494. The British ambassador to France, the Earl of St. Albans, was told by French ministers that Monaco was under French protection "without any restriction," but that if the prince failed to pay restitution, the Louis XIV "would charge him self with the persuading him to dispatch it forthwith," St. Alban to John Trevor, Collombe, 18 August 1668, TNA SP 78/124, f. 151r-v.

¹⁰¹ "Journal of G. Wood, clerk to Capt. Henry Killigrew," BL Add. MS 19306, 155.

later apprehending the Genoese corsair Giovanni Maria Isola after he seized the Tripolitan passengers of the English ship *Unity*.¹⁰²

Subjecthood and sovereignty defined the trading regime of the early modern Mediterranean. As we have seen, the Crown's efforts to protect English navigation extended its sovereign claims to encompass the security of ships in overseas waters. Yet, despite the ability of English diplomats to obtain restitution of goods seized off English ships, the fact that these negotiations played out through a language of sovereignty and princely authority constrained English power in the Mediterranean. Moreover, a ship's national identity could be a confused matter and as a result it was often unclear where authority lay over a ship and who had responsibility for the actions of its crew and captain. This ambiguous situation gave states great flexibility to apply ideas about sovereignty and subjecthood as conditions dictated. Ultimately, the English Crown proved as quick to retreat from its claims as to extend them.

III. Corsairs and Anglo-Ottoman Relations

The early modern Mediterranean was not a sea of pirates, but of corsairs. The case of the *Mediterranean* revealed the difficulties the English state faced as it sought to regulate and protect its subjects' navigation. If the increasingly aggressive maritime and naval powers of northern Europe reshaped the contours of the Mediterranean trading

¹⁰² Isola's attack on the *Unity* is mentioned in *Piracy and Diplomacy in Seventeenth-Century North Africa: The Journal of Thomas Baker, English Consul in Tripoli, 1677-1685*, ed. C.R. Pennel (Rutherford, NJ: Fairleigh Dickinson University Press, 1989), 174-175, 184-185. Rumors that Isola murdered the captured passengers appear to be unfounded since there is not mention of them in Anglo-Genoese negotiations over reparations. See, for instance "Fatto di quanto è successo alla Nave Unità Inglese" and "Riassunto della prattica in ordine alle domande del Rè d'Inghilterra, o sia del Signore Dereham Inviato di S.M.B circa il rifacimento de danni fatti dal Capitano Isola sopra la Nave Unità," in ASG Archivio Segreto, Trattati con Ministri d'Inghilterra et Olanda 1/2758.

world, they were unable to define unilaterally the legal and political foundations of a new trading regime. As a result, the seventeenth-century “age of piracy” took a different course in the Mediterranean than it did in the Atlantic.¹⁰³ Whereas the prosecution of piracy encouraged and legitimized the expansion of the English state in the Atlantic world and promoted the growing authority of the East India Company in the Indian Ocean, it would be another century before England and its fellow Atlantic and European powers brought the *corso* to a close.¹⁰⁴ Indeed, England's efforts to protect its navigation depended largely upon the authority of the states that commissioned corsairs. While the Crown's ability to secure English navigation from the effects of the *corso* testified to its growing power in the Mediterranean, the rights and status of English shipping were substantially regulated by treaties with the North African regencies. These treaties not only recognized the regencies as legitimate polities, but also established which ships could be considered English and consequently entitled to the privileges accorded in their articles.

In the mid-seventeenth century, England began to treat the regencies as sovereign entities. Winchilsea's negotiations with Ottoman ministers in 1662 to secure English ships from Algerian corsairs turned out to be the final occasion the English government would turn to Ottoman authority to regulate the behavior of the North African regencies.¹⁰⁵ In popular usage, Muslim corsairs remained “pirates,” but this

¹⁰³ On the age of piracy in the Mediterranean, see Greene, *Catholic Pirates and Greek Merchants*, chap. 3, “The Age of Piracy.”

¹⁰⁴ On the persistence of the *corso*, see eadem., 80.

¹⁰⁵ Fisher, *Barbary Legend*, 236. During the War of the Austrian Succession, a group of Tunisian merchants who lost their goods when the French ship they had freighted was taken by an English privateer and turned to the acting British representative at Constantinople, Stanhope Aspinwall. The Levant Company

characterization was at odds with both official conceptions of the regencies and the realities of England's increasingly stable relationships with them.¹⁰⁶ Instead, the English government recognized that the North African regencies ought to be accorded the rights of legitimate powers, as Lionel Jenkins noted after an Algerian ship was wrecked on the coast of Ireland in 1679 while England was at war with that regency. In his opinion on what the English government should do with the Muslim captives, Jenkins wrote, “since the government of algiers is ownd as well by Severall Treaties of peace & Declarations of Warr, as by the Establishment of Trade & Even of Consuls & Residents among them, by so many Princes & States, & particularly by your Majestie they cannot (as I humbly conceive) bee proceeded against as Pirates or Sea Rovers acting without Commission; but are to have the Priviledge of Ennemyes in an Open Warre, & must bee received to their Ransom by Exchange or otherwise.”¹⁰⁷ Critically, treaties not only recognized the regencies as distinct polities that were to be accorded rights as such, but also established

subsequently advised Aspinwall that the merchants should not expect the British government to take much notice of his representations on their behalf, “as it comes not thro' the proper Chanel, there being a British Consul at Tunis, and that Government having particular Treatys with and sending Ministers to Ours, they ought therefore to take that method to have Justice done them upon their Complaints,” Deputy Governor and Company to Aspinwall, London, 18 July 1746, TNA SP 105/118, 16.

¹⁰⁶ The merchant Thomas Dethick reflected popular, though not official, views when he wrote to Sir Joseph Williamson in 1669 to recount Algerian violations of their treaty with England and to argue that their failure to observe the terms of the treaty meant that the Algerians “are Sea-pirates & may be treated accordingly.” On the one hand, the fact that Dethick viewed Algerian seizures of ships to constitute piracy rather than acts of war highlights the ambiguous situation of the regencies as dependencies of the Ottoman Empire whose economic and governmental systems depended to varying degrees upon the *corso*. On the other hand, Dethick's comments illustrate the confused and inconsistent use of the term “pirate” common in popular usage in the early modern world, Thomas Dethick to Williamson, Livorno, 23 April/3 May 1669, TNA SP 98/ 10, f. 160r.

¹⁰⁷ “Report for restoring a Bristoll Ship taken by an Alergine and afterwards driven on the Coast of Ireland,” 11 February 1680, BL: Add. MS 18206, f. 140v-141r. This ruling also appears in William Wynne, ed., *The Life of Sir Leoline Jenkins*, 2 vols. (London, 1724), 2: 790-791. Of course, the need for the ruling is itself telling of the fact that the regencies were not automatically viewed as legitimate state actors.

them as polities in European minds. Charles Molloy thus observed that although some commentators did not think the regencies ought to be accorded “the rights of solemnities of War,” those “Nests of Pirates” nevertheless carried on diplomatic exchanges with England and had “acquired the reputation of a Government” and consequently could not “properly be esteemed Pirates but Enemies.”¹⁰⁸

Equally important is the fact that England's treaties with the regencies did not simply confer privileges upon English navigation; instead, these articles also defined what constituted an English ship and established regulations that the English were committed to follow. When Ephraim Skinner and John Finch asserted that no ship carrying the English flag ought to be searched, they implicitly argued that the flag conveyed Crown protection to any ship flying it. However, the legal and political bases of this view were shaky. In particular, the flag was not a reliable indicator of the nation to which a ship pertained. For instance, the grand master of the Order of Malta warned Louis XIV that if the French flag alone could protect a ship from search, Ottoman vessels would simply run up that banner whenever a Maltese vessel approached, thus securing

¹⁰⁸ Confusingly, Molloy reiterated his view that the North African corsairs were “indeed Pirates,” even if they were to be thought of as legal enemies, see *De Jure Maritimo et Navali*, 3rd ed. (London, 1682), 54-55. It seems significant that the first and second editions of *De Jure Maritimo et Navali* from 1676 and 1677 do not include this specific discussion of the North African regencies. It is possible that Molloy's addition reflects increasing recognition of these polities as at least pseudo-sovereign entities that followed sustained diplomatic and treaty negotiations. The jurist Alexander Justice later echoed Molloy, noting “Tis true *Algiers*, *Tripoli* and *Tunis* and some other Towns upon the Coast of *Barbary*, are only inhabited by Miscreants, who subsist by no other mean,” and that at first it was not thought fit “to allow them the Privileges granted to other States or Civil Societies of Men.” However, “they having afterwards modell'd themselves into a formal Method of Government & acknowledged the Grand Signor as their Sovereign, the Kings of England as well as other States and Princes have concluded solemn Treaties with them, and acknowledged them as free states,” *A General Treatise of the Dominion and Laws of the Sea* (London, 1705), 469.

their commerce and undermining the Order's mission and fiscal well-being.¹⁰⁹ Ships not only flew flags of convenience, covering themselves with the banner of a neutral power in order to evade inspection or capture, and they also took on English captains and mariners to disguise themselves more effectively.

When Finch and other diplomats demanded that no ship carrying the English flag be touched, they imperiled England's treaties with the North African regencies, the benefits of which were confined to ships built in England and carrying passes or having crews that were at least two-thirds English.¹¹⁰ By the mid-1670's, English consuls in North African ports warned that the regencies were losing patience as their corsairs found only English-flagged ships at sea or were forced to give up prizes that carried obviously fraudulent passes. English ministers meanwhile complained that their consuls issued passes to ships that were not built in England or lacked sufficient English crewmembers.¹¹¹ England's consul to Venice was relieved of his post in 1672 after it was discovered he had given a pass to a Venetian ship.¹¹² Indeed, at the same time as the

¹⁰⁹ See the letter of Nicholas Cotoner to Louis XIV of 16 June 1664, transcribed in Petiet, *Le Roi et le Grand Maître*, 130.

¹¹⁰ For instance, one English consul to Algiers, Francis Baker, attributed England's earlier wars with Algiers to the efforts of non-Englishmen to pass their ships off as English by obtaining English passes and English crewmembers, Baker to Jenkins, Algiers, 20 March 1683, TNA SP 71/2, f. 274r.

¹¹¹ The Admiralty required that a ship be constructed in England or if foreign built "made free" in order to qualify for a pass. Resident Francis Parry noted consul John Maynard's lax regulation of passes in Lisbon, Parry to Coventry, Lisbon, 9/19 November 1675, TNA SP 89/13, f. 124r-v. John Ward, a consul in Algiers, similarly recorded that the English resident in Venice provided passes to ships with less than the required two thirds English crew, leading to complaints from Algerian corsairs, Ward to Arlington, Algier, 18 December, 1672, TNA SP 71/2, f. 16r. Sir John Narborough, meanwhile, complained of "the undue practices of his Majesty's subjects (merchants) abroad in the owning of foreign ships, and thereupon giving them title to the waring his Majesty's colours, to the endangering a breach some time or other with the Turks," quoted in J. R. Tanner, ed., *A Descriptive Catalogue of the Naval Manuscripts in the Pepysian Library at Magdelene College, Cambridge*, vol. 4, *Admiralty Journal* (Naval Records Society, 1923), xxi.

¹¹² Fisher, *Barbary Legend*, p. 256.

dispute over the *Mediterranean*, consul Skinner notified Arlington that the “Mongroll” ship *Katherine* had been taken by the Tripolitans. Skinner had earlier warned Arlington that though this ship carried an English pass, it was owned by foreigners and had a Dutch master and thus might cause a “breach of our peace with the Turks, when they shall hear we Culler other nations Concernes.”¹¹³ English ministers repeatedly complained of these practices, which extended the benefits of English navigation to foreign merchants and to ships built outside of England.

The abuse of passes threatened English ships in the Mediterranean because it violated the treaties that regulated England's relationship with the North African regencies. During the 1670's the English government took steps to define more carefully what constituted an English ship and which ships could expect its protection. On December 22, 1675, Charles II issued two proclamations that sought to regulate English navigation in the Mediterranean. Noting that English subjects “do take upon them to Colour & conceal the Ships of forreiners, with whom the said Government of Algier is in Warr, & to that end do either wholly navigate the Ships of such forrainers or otherwise serve in the Same as Mariners & Soldiers,” and thus gave the Algerians “Just Cause of Complaint” and endangered the security of English navigation, Charles ordered that English subjects no longer serve on the ships of states at war with Algiers. Furthermore, Charles warned that any subjects captured while in the service of belligerents could expect to be excluded from the benefits of England's treaty with Algiers. The second proclamation echoed the first, complaining that passes granted to secure English ships

¹¹³ Skinner to Arlington, Livorno, 1/11 February 1673 and 27 June/7 July 1673, TNA SP 98/5, f. 134r and 173r.

were instead being used to protect foreign vessels “to His Majesty's great dishonor, the offence of his Allyes and the prejudice of the trade & navigation of this Kingdom.” The king accordingly limited the validity of the current passes and called for the creation of new ones that would be more carefully regulated and less prone to forgery.¹¹⁴

Merchants and members of Parliament resisted these new rules, complaining both of the cost of the passes and of the risks they posed to ships that neglected to obtain or renew these documents. However, the official response to this criticism highlighted the fact that flawed legal arguments underlay the claims that English ships were naturally free to carry any passengers or goods without fear of interference. In 1676, the English merchant and member of Parliament Thomas Papillon opposed the introduction of Mediterranean passes as called for by England's treaty with Algiers, arguing that “Formerly an *English* ship and *Englishmen* was security.” In response, the Secretary of State Henry Coventry noted, “it is not in the Civil Law, 'that free *English* ships make free goods,' but by virtue of a Treaty.”¹¹⁵ According to the prevailing legal opinions of the seventeenth century, Coventry was clearly right: whatever privileges accrued to English ships as neutral vessels stemmed purely from the provisions of bilateral treaties.

¹¹⁴ Copies of both proclamations are given in TNA CO 389/3, f. 14r-v and f. 14v-15v, respectively. For background on these proclamations and the pass system they standardized, see J. R. Tanner, ed., *A Descriptive Catalogue of the Naval Manuscripts in the Pepysian Library at Magdelene College, Cambridge*, vol. 3, *Admiralty Letters* (Naval Records Society, 1923), xviii-xxiv.

¹¹⁵ Anchitell Grey, ed., *Debates of the House of Commons, From the Year 1667 to the Year 1694*, vol. 4, 1675-1677 (London, 1763), 210-211. The recognition that the rights of English navigation with regards to North African corsairs depended on treaties provides a different perspective on the maritime customs of the regencies than that later offered by Martin Hübner in his defense of neutral shipping during the Seven Years' War. Hübner applauded those “Peuples que notre orgueil appelle Barbares” for observing a perfect respect for neutral vessels within their perpetual war against Portugal, Spain and other Christian nations. While Hübner logically viewed this conduct as a natural outcome of the deficient navigation of the regencies, it also rested upon treaties that paralleled those between European states, Martin Hübner, *De la saisie des bâtimens neutres* (La Haye, 1759) 1: 222-225.

Implicitly, Coventry thus seconded the opinions that Capponi had offered with regards to the actions of Franceschi and confirmed that, in theory, Tuscan corsairs had every right to seize Muslim goods found on English ships. Since England had no marine treaties with Tuscany, any claim to the immunity of English ships from search rested purely on the relative power of the two states.

The proclamations regulating the use of passes in the Mediterranean signaled the rise of a new treaty regime between England and the North African regencies in which official passes rather than the independent assertion of a national identity constituted the basis for determining to which country a ship belonged. These reforms were unable to halt the war that broke out between England and Algiers in 1677, which lasted until 1682 and cost the English hundreds of captured ships and thousands of enslaved mariners. However, the treaty that ended that war called for all English ships in the Mediterranean to carry passes in order to verify their identity, a requirement that the Admiral Arthur Herbert, who negotiated the treaty, thought was neither a dishonor to the king nor a disadvantage to his subjects and instead “an honour to the office of Lord High Admiral.”¹¹⁶ Although Charles II's proclamations and England's new treaty with Algiers denied the protection of the English state to Englishmen in the service of foreign powers, they also represented an extension of the regulatory power of the English Crown. Though these proclamations would be violated and the distribution of passes to non-English vessels would proliferate in the late eighteenth century, the use and attempted regulation

¹¹⁶ Admiral Herbert, Algier Road, April 12, 1682, TNA SP 91/2, f. 311r. See also Fisher, *Barbary Legend*, 264-265.

of passes nevertheless established that the foundations of English trade in the Mediterranean depended upon a treaty-based commercial and marine system.¹¹⁷

English diplomats' arguments in favor of English navigation could, on the other hand, be straightforwardly duplicitous. In July 1673 and when Tuscan officials still believed the *Mediterranean* to be English, the directors of the Levant Company had already notified Finch that the ship was not English-built and was "sailed by certain loose Venetians and French, with some English, whom We are not like to see in England," suggesting that this information "may be of use in Turkey."¹¹⁸ Thus, while he and Skinner pressed the Grand Duke for restitution of the goods seized from the *Mediterranean*, Finch told the pasha's procurator that it "was No English ship," and that since Chappel had become a subject of the Grand Duke, "His Majesty was longer concern'd in Him." Based on this, he induced the agent to write an attestation that he had "no Pretension's against the Captain or any English Man" and that Finch's assistance was only an act of kindness.¹¹⁹ Finch does seem to have exerted considerable effort to ensure the return of the pasha's goods in both Livorno and Malta. However, his negotiations with the procurator reflect the Levant Company's general policy to avoid any hint of collective responsibility for the independent actions of either its merchants or other Englishmen in the Mediterranean.¹²⁰

¹¹⁷ Fisher, *Barbary Legend*, 299, 326-327; Edoardo Grendi, "Gli inglesi a Genova (Secoli XVII-XVIII)," *Quaderni Storici* 39, no. 1 (April 2004): 255.

¹¹⁸ Directors of the Levant Company to Finch, London, 28 July 1673, TNA SP 105/113, 366.

¹¹⁹ Finch, Constantinople, 24 September 1680, TNA SP 97/19, f. 250r.

¹²⁰ Sonia P. Anderson, *An English Consul in Turkey: Paul Rycaut at Smyrna, 1667-1678* (Oxford: Clarendon Press, 1989), 198-199. The directors of the Company accordingly advised Consul Rycaut after his efforts in aid of the *Lion* that while the company approved of his general conduct, it refused to shoulder

Finch's anxiety that Ali Pasha would demand compensation for his losses proved well founded when the Ottoman official, in late 1680, brought his case to the empire's government.¹²¹ In September 1680, John Finch was called before the *divan-i hümayun* (the Ottoman imperial council) by the grand vizier Merzinfonlu Kara Mustapha Pasha to answer Ali Pasha's accusations. When Finch invoked the Capitulations to argue that no Englishman was to be held responsible for the actions of another, the vizier replied that those articles, "were understood in matters of Contract between Merchant & Merchant, but not in what related between Prince & Prince."¹²² Kara Mustapha explained to him, "You & all other Ambassadors are sent hither by your respective Princes, to answer for the lives & Estates of all Mussulmen all over the World that are endammag'd or Sufer by Your respective Subjects, & You are here a Hostage to answer for all Dammage done by English all Over the World."¹²³ In response, Finch objected that the king could be held accountable neither for Chappel, who had become a subject of the Grand Duke of

the expences incurred by the affair, "The same being plainly caused by the Ship; which by the Companies Rules is only lyable thereto Nor may We on any Termes admit a president of such consequence," London, 28 November 1672, TNA SP 105/113, 320.

¹²¹ Finch refers to the pasha's continued requests for the restitution of his remaining goods in a letter to Cosimo III, when he records that the discovery that Ali Pasha's procurator had failed to turn over a sum of money would serve as a shield, "ogni volta che il Passà fa domande d'altra robba, et appresso il Gran Visir parimente mi serviranno di scansar la forza delle sue pretensioni," Pera, 14/24 February 1675, ASF Auditore dei Benefici Ecclesiastici poi Segretaria del Regio Diritto, 5683. On Ali Pasha's demands for compensation, see also Roger North, *The Life of the Honourable Sir Dudley North* (London, 1744), 94.

¹²² Diary entry of John Finch, 1/11 October 1680, ROLLR Finch MS DG 7, Diary of Sir John Finch, f. 151r. Finch appears to have appealed to Article 8 of the Capitulations that he confirmed in 1675, which established, "If it happen that any Englishman absent himself, or fly the country, or turn bankrupt, either on account of his won debts, or for having entered into suretyship, the creditor shall have no redress but from the debtor, and not from any other Englishman," Charles Jenkinson, ed., *A Collection of all the Treaties of Peace, Alliance, and Commerce, between Great-Britain and Other Powers* (London, 1785), 1: 231.

¹²³ Finch, Constantinople, 25 September 1680, TNA SP 97/19, f. 226r.

Tuscany, nor for “Pirates at Sea,” like Franceschi.¹²⁴ Finch explained that just as “the Gran Signore is a great Emperour, & Yett He could not secure His ships from Gran Cairo from the Corsaro's, Nor His Caravans by Land from the Arabians both being often robb'd,” so neither “could My Master Secure His own subjects or the Gran Signore from Pirates; for None but God Almighty could doe it.”¹²⁵ The Vizier ultimately gave Finch six months in which to send for further instructions from England and directed him to request that the Grand Duke of Tuscany should dispatch a procurator for Chappel's family, that captain himself having died earlier, in order to answer Ali Pasha's charges against him.¹²⁶

To Finch and other Europeans in the Ottoman Empire, Ali Pasha's suit was yet another example of the tyranny and greed of Kara Mustapha Koprulu, a vizir reviled in the contemporary reports of ambassadors and later histories for his efforts to more firmly exert Ottoman control over European communities within the empire.¹²⁷ Yet, there is little evidence even from the English records that the Ottoman approached the case in a

¹²⁴ Diary entry of John Finch, 1/11 October 1680, ROLLR Finch MS DG 7, Diary of Sir John Finch, f. 150r-151r.

¹²⁵ *idem.* For a recent study of questions of Ottoman control over maritime space, see Molly Greene, “The Ottomans in the Mediterranean,” in *The Early Modern Ottomans: Remapping the Empire*, ed. Virginia H. Aksan and Daniel Goffman (Cambridge: Cambridge University Press, 2007), 104-116.

¹²⁶ When Finch objected that the Grand Duke would probably not “part with his subject,” Kara Mustapha asserted, “the King who had made the Grat Duke part with the mony of His subjects could make Him part with their Persons also,” Diary entry of John Finch, 1/11 October 1680, ROLLR Finch MS DG 7, Diary of Sir John Finch, f. 157r-158r.

¹²⁷ The Venetian bailo Civran wrote, “ne si vede sia per terminare si molesta controversia senza qualche nuovo incomodo, et aggravio d'esso Signore Ambasciatore [Finch], questa fù la ricompensa, che incontrò la cortesia trà Barbari,” Pietro Civran to the Senate, Pera, 29 July 1680, ASV Dispacci degli Ambasciatori al Senato da Constantinopoli, 161, f. 203v. For a more balanced perspective on Kara Mustapha Pasha's relations with the European ambassadors and communities in the Ottoman Empire, see Merlijn Olon, “‘A Most Agreeable and Pleasant Creature’? Merzifonlu Kara Mustafa Pasa in the Correspondence of Justinus Colyer (1668-1682),” *Oriente Moderno* 22, no. 2 (2003): 649-669.

notably unjust way, and Kara Mustapha ultimately denied Ali Pasha's charge and freed the English from any payment. Ottoman demands for redress for losses sustained at the hands of Christian corsairs provide an additional perspective from which to explore the questions of sovereignty, authority and interstate relations raised by the *corso*. Christian corsairs were a persistent problem for the Ottoman Empire in the later half of the seventeenth century and the letters of the Venetian ambassador testify to Kara Mustapha's growing impatience with their activity in the Greek archipelago.¹²⁸ Like the English and most other powers, the Ottomans sought justice for subjects who suffered at the hands of corsairs, especially when in many cases it seemed that ships' masters were suspiciously ready to turn over their passengers and goods.¹²⁹

Ottoman officials employed a range of arguments when they demanded that the English Crown and Levant Company pay reparations for losses sustained onboard English vessels. When Ali Pasha wrote to Charles II to ask that the king obtain the restitution of his goods, he insisted that John Earlsman, the English consul in Tunis, had stood as guarantor for his goods and he subsequently reported to Kara Mustapha Pasha that Finch had promised to restore all the goods taken by Franceschi.¹³⁰ Finch vigorously denied that he had been obligated to obtain Ali Pasha's goods and that while he doubted Earlsman would have ensured the Pasha's goods, the consul would have to answer for

¹²⁸ Pietro Civran to the Senate, Pera, 4 November 1680, ASV Dispacci degli Ambasciatori al Senato da Constantinopoli, 161, f. 262v. See also Michel Fontenay, "L'Empire Ottoman et le risque corsaire au XVII^e siècle," *passim*.

¹²⁹ Maurits H. van den Boogert, "Redress for Ottoman Victims of European Privateering: A Case against the Dutch in the *Divan-i Hümayun* (1708-1715)," *Turcica* 33 (2001), 102.

¹³⁰ "A Copy of the Bassas letter to the King," TNA SP 105/109, f. 255r-v; diary entry of John Finch, 1/11 October 1680, ROLLR Finch MS DG 7, Diary of Sir John Finch, f. 150r-151r.

any such guarantees he may have made.¹³¹ Agreements between European consuls and Ottoman merchants were private contracts and Finch's response to the Ottoman argument that Earlisman had ensured Ali Pasha's goods appears to reflect this view.¹³² However, both Ali Pasha and Kara Mustapha Pasha seem to have assumed that these contracts had a public character and bound the entire English nation to provide security for the relevant goods. Indeed, in his letter to Charles II, Ali Pasha also referred to the "patti" and commands of the Ottoman sultan that provided for the free passage of English vessels and argued that the reciprocal friendship and good relations between the states should induce the English to honor his request.¹³³ Ali Pasha thus appealed to reciprocity founded in the very treaties which Kara Mustapha argued were inapplicable to matters between sovereigns. Both he and Kara Mustapha Pasha further emphasized the fact that Chappel had refused to defend his ship or its Ottoman cargo when approached by Domenico Franceschi.¹³⁴ Though neither of the Ottoman officials explicitly mentioned England's

¹³¹ Finch, Constantinople, 24 September 1680, TNA SP 97/19, f. 251v; diary entry of John Finch, 1/11 October 1680, ROLLR Finch MS DG 7, Diary of Sir John Finch, f. 150r-151r. Consul Earlisman had indeed warned against Muslim passengers embarking on the *Lion*, John Earlisman, Tunis, 1 July 1672, TNA SP 71/26, f. 203v. However, the French chancellery records from Tunis show that Earlisman had previously entered into contracts of insurance with Italian merchants and it is possible that he did the same with Ali Pasha, Pierre Grandchamp, ed., *La France en Tunisie au XVII^e Siècle*, vol. 7, 1661-1680 (Tunis: Impr. rapide, 1929), 152. Molly Greene further records instances of French consuls standing as guarantors of the goods of Ottoman officials, *Catholic Pirates and Greek Merchants*, 152-153.

¹³² Greene, *Catholic Pirates and Greek Merchants*, 153-154.

¹³³ The language of this Italian letter from the pasha to Charles II is frequently confused, probably as a result of translation difficulties, but the sense that agreements existed establishing reciprocal free commerce between the Ottomans and the English seems clear, "A Copy of the Bassas letter to the King," TNA SP 105/109, f. 255r-v.

¹³⁴ Diary entry of John Finch, 1/11 October 1680, ROLLR Finch MS DG 7, Diary of Sir John Finch, f. 156r. In his letter to Charles II, Ali Pasha recorded that upon the approach of Franceschi "Io subbitamente parlò col Capetano del Vasciello Io con questi Legni voglio Combattere, e Lei che cosa dica, e Lui mi rispose questi Vascielli sono due non si pole combattere, e anco non stiamo in ordine," TNA SP 105/109, f. 255r-v.

treaty with Tunis, Chappel's failure to defend his Ottoman passengers and their goods constituted a clear violation of those articles.¹³⁵

The Ottoman case for restitution of Ali Pasha's losses rested on the argument that Chappel had betrayed his passengers and that Charles II was responsible for the misdeed of an English captain.¹³⁶ Rather less diplomatically, after the Marquis de Fleury seized the *Jerusalem*, the government of Tripoli wrote to James II to complain that Killigrew had failed to obtain the vast majority of his goods and to warn that if the remaining goods were not returned, “no one Merchant will give to or take lading from your Shipps in the Ports belonging to the Countries of Islam, and it is certaine that your name, and reputation will altogether suffer detriment, for in Malta they have no respect to your Passport, and they have put your Colours the bottome upwards.”¹³⁷ Though the letter threatened that English merchants in the Ottoman Empire would be forced to pay compensation if restitution was not made, it is notable that the Tripolitan divan appealed to both English national honor and commercial interest to encourage James to obtain the goods still at Malta.

Despite such appeals to both the reciprocity of commerce between the Ottoman Empire and England and to the authority of the English state, the Crown absolved itself of responsibility in the matter of redress for Ottoman passengers and goods seized from English ships. A letter from Charles II to Kara Mustapha in response to the suit over the

¹³⁵ On the requirement that English ships defend Tunisian passengers against Christian corsairs, see Greene, “Beyond the Northern Invasion,” 54.

¹³⁶ Diary entry of John Finch, 1/11 October 1680, ROLLR Finch MS DG 7, Diary of Sir John Finch, f. 152r.

¹³⁷ The Dey and Basha and Government of Tripoli to James II, TNA SP 71/22, f. 66r

Mediterranean thus echoed Finch's position: "Nor is it reasonable, That the Grand Signor who is a most Potent & Mighty Monarch & yet not able to protect his Ships from the Corsairs, should notwithstanding demand from Us those assureances for the Lives & Estates of his Mussellmen at Sea, Which we cannot afford to our owne Subjects, & is only in the Power of the one great & omnipotent God."¹³⁸ James II reiterated these arguments following de Fleury's seizure of the *Jerusalem*.¹³⁹ Trumbull, meanwhile, worried that English participation in the *caravane* trade between Egypt and other parts of the Ottoman Empire would continue to place the Levant Company at risk from further assaults by corsairs. He consequently sought and eventually obtained a letter from the Grand Vizier stating that English merchants and captains who stood as guarantors for Ottoman passengers and goods would be held responsible for any losses suffered at the hands of corsairs. However, the English would not be held responsible for those losses if no security were promised.¹⁴⁰ Trumbull was thus able to deflect the Pasha of Tripoli's attempts to secure restitution for his outstanding losses and he reiterated that the Crown's efforts in his behalf were "out of meere grace, & friendship, & not of any obligation."¹⁴¹

In light of the now often cited observation that accusations of piracy served as a means to spread and enforce conceptions of legal and imperial sovereignty, the letters of Finch and Charles II suggest an admission of the limits of royal authority over English

¹³⁸ Charles II to the Vizier Azem, BL Add. MS 72551, f. 3v. Another copy of this letter appears in TNA SP 105/109, f. 252r-253r.

¹³⁹ Copy of the King's Letter to the Vizier Azem," 9 April 1687, BL Add. MS 72550, f. 21-22.

¹⁴⁰ Trumbull to the Levant Company, Constantinople, 30 May 1688, BL Add. MS 72590, f. 30v-31r. A copy of the Vizier's letter with an English translation is contained in TNA SP 110/88, f. 22v-23v.

¹⁴¹ Trumbull to Consul Loddington, Constantinople, 1 August 1688, BL Add. MS 72590, f. 71r-v.

navigation in the Mediterranean. Of course, it is easy to see this argument as stemming from the same disingenuous approach that Finch took in his dealings with Ali Pasha's agent and Tuscan officials. It nonetheless contrasts markedly with the more assertive claims that emerged from similar situations in the Indian Ocean. It is possible to draw a parallel between the Ottoman reaction to the affair of the *Mediterranean* and the Mughal response to European depredations upon their ships returning from the Red Sea. In both cases, these imperial authorities used their power over European communities within their jurisdiction to enforce their sovereignty over subjects overseas. Kara Mustapha's declaration to Finch that he would be held responsible for affronts to Ottoman subjects "all Over the World" highlighted the similarities between the Ottoman and Mughal responses to the problem of corsairs or pirates.¹⁴² However, at least one East India Company official thought that the Company could take advantage Mughal demands that it to provide protection for Mughal shipping. Samuel Annesley saw Company convoys as a means to exert a measure of sovereignty over the waters and trade between western India and the Red Sea.¹⁴³ Conversely, when Kara Mustapha held the English responsible for the losses sustained by Ali Pasha onboard the *Mediterranean*, the Crown and Levant Company professed to be unable to account for the depredations of pirates.

IV. Conclusion

¹⁴² For the Mughal response to piracy as an exercise in oceanic sovereignty, see Benton, "Legal Spaces of Empire," 714-715; eadem., *A Search for Sovereignty*, 142-144.

¹⁴³ Philip J. Stern, "'A Politie of Civill & Military Power': Political Thought and the Late Seventeenth-Century Foundations of the East India Company-State," *Journal of British Studies* 47, no. 2 (April 2008): 253-254; idem., *The Company-State*, 136-138.

While the definition and prosecution of piracy expanded the reach of English law and empire in the Atlantic and Indian Oceans, the Crown's reaction to the threat of Mediterranean corsairs limited the extent of its authority in that sea to its own subjects and their navigation.¹⁴⁴ Charles II, James II and their representatives invoked the image of a lawless sea to justify their refusal to safeguard Muslim passengers on board English vessels. Yet, they actually described an oceanic environment marked by such an array of competing and intersecting sovereignties that it was impossible to impose new legal regimes upon it as Europe's maritime empires did in the Atlantic and Indian Oceans. Unlike the *cartazes* of the Estado da India and East India trading companies, Mediterranean passes purported only to identify the nationality of the ship carrying them; the protection they conferred rested not in the authority of a commercial or political body but rather in the terms of the specific treaty that bound the subjects of the treaty's parties to allow each others' vessels to pass freely. Despite the growing disparities of power that existed in the early modern Mediterranean, it remained a sea in which local sovereignties frequently frustrated the growing power of the English state.

¹⁴⁴ On the East India Company's accusations of piracy against South Asian and Muslim maritime rivals, see Patricia Risso, "Cross-Cultural Perceptions of Piracy: Maritime Violence in the Western Indian Ocean and Persian Gulf Region during a Long Eighteenth Century," *Journal of World History* 12, no. 2 (Fall 2001): 293-319; Stern, *The Company-State*, 187-194.

Chapter 4

Privateers and Prize Courts, 1689-1713

Our Laws take not much Notice of these Privateers, because the Manner of such Warring is new, and not very honorable...¹

Through the seventeenth century, the state-sanctioned religious warfare of the *corso* defined the distinct political and cultural environment of the Mediterranean. At the close of that century, however, the Wars of the League of Augsburg and of the Spanish Succession transformed the relationship between northern Europe and the Mediterranean.² These wars established France and England as the principal maritime powers in a Mediterranean increasingly dominated by Europe's great power rivalries.³ In the process, they changed the dynamics of naval warfare in the Mediterranean. During the later half of the seventeenth century, England had established a military presence in the Mediterranean and dispatched fleets against the North African regencies in order to secure English navigation from attack by corsairs. With the influx of privateers and warships into the Mediterranean that followed the outbreak of the War of the League of

¹ Alexander Justice, *A General Treatise of the Dominion and Laws of the Sea* (London, 1705), 472.

² On the continuities between the military strategy of the Restoration monarchy and that of William III, see David Davies, "The Birth of the Imperial Navy? Aspects of Maritime Strategy, c. 1650-90," *Parameters of British naval power, 1650-1850*, ed. Michael Duffy (Exeter: University of Exeter Press, 1992), 30-31.

³ Jeremy Black, "The Mediterranean as a Battleground of the European Powers, 1700-1900," in *The Mediterranean in History*, ed. David Abulafia (Los Angeles: J. Paul Getty Museum, 2003): 251-282. On the changing political culture of the Mediterranean in the eighteenth century, see also Molly Greene, *A Shared World: Christians and Muslims in the Early Modern Mediterranean* (Princeton: Princeton University Press, 2000), 206-209.

Augsburg, European warfare, rather than the *corso*, became the primary source of maritime violence in the region.⁴

The decades of war that culminated in the Treaty of Utrecht of 1713 marked the ascendance of Britain as an Atlantic empire and confirmed its emergence as a Mediterranean power.⁵ For more than two decades, the Mediterranean was a second front in England's wars against France where English fleets supported Austrian, Savoyard and Spanish allies along the Italian and Iberian coasts and suppressed French lines of supply and communication.⁶ The conquest and occupation of Gibraltar and Minorca formalized the presence of the British Empire in the Mediterranean and gave Britain experience

⁴ G. N. Glark, *The Dutch Alliance and the War against French Trade, 1688-1697* (Manchester: Manchester University Press, 1923); W. R. Meyer, "English Privateering in the War of 1688 to 1697," in *The Mariner's Mirror* 67 (1981): 259-272; idem., "English Privateering in the War of the Spanish Succession 1702-1713," in *The Mariner's Mirror* 69 (1983): 435-446; J. S. Bromley, *Corsairs and Navies, 1660-1760* (London and Ronceverte: The Hambledon Press, 1987). For a broader survey of British privateering, see David J. Starkey, *British Privateering Enterprise in the Eighteenth Century* (Exeter: University of Exeter Press, 1990). The Mediterranean dimension of privateering has received far less attention, but see the articles of Colin Heywood, "The Kapudan Pasha, the English Ambassador and the *Blackham* Galley: An Episode in Anglo-Ottoman Maritime Relations (1697)." *The Kapudan Pasha, his Office and his Domain: Halycon Days in Crete IV: a Symposium held in Rethymnon, 7-9 January 2000*, ed. Elizabeth Zachariadou (Rethymnon: Crete University Press, 2002), 409-438; idem., "Ottoman Territoriality Versus Maritime Usage: The Ottoman Islands and English Privateering in the Wars with France, 1689-1714," in *Insularités ottomanes*, ed. Nicolas Vatin and Gilles Veinstein (Maisonneuve & Larose: Institut français d'études anatoliennes, 2004), 145-173.

⁵ Jonathan I. Israel, "The Emerging Empire: The Continental Perspective, 1650-1713," in *The Oxford History of the British Empire*, vol. 1, *The Origins of Empire*, ed. Nicholas Canny (Oxford: Oxford University Press, 1998), 444; Jeremy Black, *Trade, Empire and British Foreign Policy, 1689-1815* (London and New York: Routledge, 2007), 121; Julian Hoppit, *A Land of Liberty?: England, 1689-1727* (Oxford: Clarendon Press, 2000), 122-123.

⁶ On English naval strategy and operations in the Mediterranean, see Julian Corbett, *England in the Mediterranean: A Study of the Rise and Influence of British Power within the Straits, 1603-1713*, 2 vols. (London: Longmans, Green, and Co., 1904), vol. 2, chaps. 26-33 and, more recently, John Ehrman, *The Navy in the War of William III* (Cambridge: Cambridge University Press, 1953), chap. 12, "The Fleet in the Mediterranean, July 1694-October 1695;" N. A. M. Rodger, *The Command of the Ocean: A Naval History of Britain, 1649-1815* (London: Allen Lane, 2004), 152-156, 164-173. On the economic and commercial aspects of England's Continental commitment during the Wars of the League of Augsburg and of the Spanish Succession, see, D. W. Jones, *War and Economy in the Age of William III and Marlborough* (Oxford and New York: Basil Blackwell, 1988).

governing garrison colonies whose populations were neither British nor Protestant.⁷

Moreover, the regulation of the maritime violence spawned by the wars against Louis XIV also established and expanded the legal authority of the English state around the Atlantic and Indian Oceans and in the Mediterranean.⁸ In the Atlantic, campaigns against piracy followed both the War of the League of Augsburg and the War of the Spanish Succession as Admiralty courts and naval forces sought to enforce peace “beyond the line.”⁹ In the Mediterranean, on the other hand, the adjudication of prize cases called into question where legal authority lay to decide whether acts committed at sea were lawful or not.

Decades of naval warfare made English courts central to the organization and regulation of navigation around the world. The adjudication of prize cases linked the expansion of English naval power in the Mediterranean and the development of English empire around the Atlantic and Indian Oceans. The Wars of the League of Augsburg and

⁷ Matthew Prior contended that “our trade in the Mediterranean was not sufficiently assured without Gibraltar and Port Mahon.” According to Prior’s French counterpart, the Marquis de Torcy, these two sites gave Britain “domination of Spain and of France in the Mediterranean,” “Prior’s Negotiations in France,” *Report on the Manuscripts of His Grace Duke of Portland preserved at Welbeck Abbey*, ed. J. J. Cartwright (Norwich: H. M. Stationery Office, 1899), 5: 35, 37. On the negotiations between Prior and Torcy, see Dale Miquelon, “Envisioning the French Empire: Utrecht, 1711-1713,” *French Historical Studies* 24, no. 4 (Autumn 2001): 654-655. See also Corbett, *England in the Mediterranean*, 2: 565-567. On the British experience at Gibraltar and Minorca, see Linda Colley, *Captive: Britain, Empire, and the World, 1600-1850* (New York: Anchor Books, 2004), 35, 69-72; Desmond Gregory, *Minorca, the Illusory Prize: A History of the British Occupations of Minorca between 1708 and 1802* (Rutherford, NJ: Fairleigh Dickinson University Press), passim.

⁸ Philip J. Stern, “British Asia and British Atlantic: Comparison and Connections,” *William and Mary Quarterly*, 3rd ser., 63, no. 4 (October 2006): 708-712. For a synopsis of the regulatory problems raised by free-wheeling privateers in the last decade of the seventeenth century, see G. N. Clark, *The Dutch Alliance*, 46-49.

⁹ See Janice E. Thomson, *Mercenaries, Pirates, & Sovereigns: State-Building and Extraterritorial Violence in Early Modern Europe* (Princeton: Princeton University Press, 1994), 47-54; Elizabeth Mancke, “Empire and State,” in *The British Atlantic World, 1500-1800*, ed. David Armitage and Michael Braddick, 2nd ed. (Houndmills: Palgrave Macmillan, 2009), 203-204.

of the Spanish Succession led the High Court of Admiralty and its surrogates to exercise jurisdiction over acts committed in distant waters. During the seventeenth century, prize courts and prize law developed to provide an institutional framework to legitimize the capture of ships and goods in times of war.¹⁰ In theory, prize courts operated on the basis of the law of nations and thus had a supranational character.¹¹ Yet at a time when there was no settled or fully shared understanding of the law of nations and when governments put forward conflicting interpretations of the rights of neutrals, prize courts conveyed the legal authority of particular states to the high seas.

However, it was less the expanding reach of English courts and of the English state that defined the legal framework of English navigation in the Mediterranean than it was the interaction of those authorities with their Mediterranean counterparts. Through the early-modern era there was no consensus as to where jurisdiction properly lay to adjudicate prize cases, particularly when ships were captured within waters claimed by a neutral state. English claims that the Admiralty had sole authority to adjudicate prizes taken by ships bearing its commission clashed with competing jurisdictions claimed by Mediterranean courts. Disputes over the rights of neutral princes to secure their ports and coastal waters were central to defining the maritime limits of territorial states.¹² These

¹⁰ R. G. Marsden, "Early Prize Jurisdiction and Prize Law in England," pts. 2 and 3, *The English Historical Review* 25, no. 98 (April 1910), 243-263; 26, no. 101 (January 1911), 34-56; Carl J. Kulsrud, *Maritime Neutrality to 1780* (Boston: Little, Brown, and Company, 1936), passim.

¹¹ Henry Bourguignon's discussion of Sir William Scott's understanding of the supranational character of English prize law includes earlier examples of this view, *Sir William Scott, Lord Stowell, Judge of the High Court of Admiralty, 1798-1828* (Cambridge: Cambridge University Press, 1987), 264-273. See also Philip C. Jessup and Francis Deák, *Neutrality, its History, Economics and Law*, vol. 1, *The Origins* (New York: Columbia University Press, 1935), 205-206, 210-211; Benton, *A Search for Sovereignty*, 156-157.

¹² Fulton, *Sovereignty of the Sea* (Edinburgh: William Blackwood and Sons, 1911), 552-553; Wyndham Walker, "Territorial Waters: The Cannon Shot Rule," *British Yearbook of International Law* 22 (1945):

disputes contrasted the extraterritorial authority of the English Admiralty over prizes taken by English ships with the sovereignty of Mediterranean states over their littoral waters. In the process, they raised questions that defined the development of British power in the inner sea through the eighteenth century.

In a sea where England's territorial possessions were small and of often debatable importance, the sovereign authority of the English state was most evident in the regulation of navigation. English sovereignty, even over subjects and ships, was nevertheless limited in the Mediterranean, where English vessels constantly sailed through waters subject to the overlapping and competing jurisdictions of other states and empires. Disputes over Admiralty jurisdiction between England and neutral states in the Mediterranean established and contested the sovereign authority of the English state in that sea. Legal and jurisdictional questions arose when English privateers violated the neutrality of Tuscany and the security of Ottoman ports during the wars against Louis XIV. Despite the radically different political contexts of a vulnerable Italian principality and an empire that dominated the eastern Mediterranean, Ottoman and Tuscan responses to Anglo-French warfare were comparable. Ottoman efforts to preserve the security of the port of Smyrna paralleled Tuscan policy towards Livorno, as both polities sought to preserve the openness of their commercial centers. Moreover, English privateers who sailed out of Livorno and cruised in the Levant established concrete connections between the ways in which Tuscan and Ottoman officials sought to safeguard their ports and waters. A comparison of Tuscan and Ottoman approaches to maritime neutrality

210-231; H. S. K. Kent, "The Historical Origins of the Three-Mile Limit," *The American Journal of International Law* 48, no. 4 (October 1954): 537-553.

illustrates how the political and legal contexts of the western and eastern Mediterranean shaped the regulation of English privateering in different ways. Conversely, similarities in Ottoman and Tuscan responses to the escalation of naval warfare around their ports reveal the existence of a maritime legal regime that connected the different parts of the Mediterranean and linked them to the wider world.

I. Prize Law and Privateers in the Mediterranean

The wars against Louis XIV confirmed and encouraged the expansion of English naval power into the Mediterranean that had begun with the seventeenth-century campaigns against the corsairs. Although the Wars of the League of Augsburg and of the Spanish Succession changed the political and military dynamics of the early modern Mediterranean world, their impact on the legal regime of that sea is less clear. As the regulation of privateers and the determination of prize cases established the jurisdictional authority of English courts in Mediterranean waters, the expansion of European naval warfare into the Mediterranean made a state-based system of prize law as important to Mediterranean navigation as that of the *corso*. The growing importance of English courts in the Mediterranean did not, however, supplant existing legal authorities there. The High Court of Admiralty's claim to jurisdiction over prizes captured by English vessels carried the authority of the English state overseas, but the Admiralty was just one body among many that exercised jurisdiction in Mediterranean waters.

The growth of privateering and European naval warfare in the Mediterranean partially integrated that sea into an Atlantic-based legal regime. During the seventeenth century, both the practice of the *corso* and its institutional foundations distinguished the

Mediterranean from other oceanic bodies. As autonomous bodies dedicated to the pursuit of religiously-inspired naval warfare, crusading orders and the prize courts which served them reflected the Mediterranean environment in which they operated. While prize law in the Atlantic evolved within the context of the development of a nation-state system, in the Mediterranean prize courts instead responded to the exigencies of a perennial and ill-defined holy war.¹³ Yet, despite their different ideological frameworks, the *corso* and privateering actually raised many of the same questions for the legal and sovereign organization of navigation and maritime warfare. In particular, the borderline legitimacy of corsairs resembled that of privateers who, according to Charles Molloy, were reputed to be “but one remove from a Pirat.”¹⁴ Both corsairs and privateers depended on the support of sovereign and recognized authorities to legitimate their actions. For example, Antonio Martin, a Tuscan corsair, appealed to his commission from the Grand Duke to escape prosecution in a Venetian court. When the master of an English ship that he had previously seized managed to have the corsair brought to court at Candia in 1659, Martin brought that litigation to a close by arguing that he was legally responsible only to the prince who had issued his commission.¹⁵

Competition among courts and sovereigns over the jurisdictional authority to hear prize cases and to punish unlawful behavior shaped the legal and political organization of Mediterranean trade and navigation. The jurisdiction of the Admiralty over prizes taken

¹³ Molly Greene, *Catholic Pirates and Greek Merchants: A Maritime History of the Mediterranean* (Princeton: Princeton University Press, 2010), 110-111.

¹⁴ Charles Molloy, *De Jure Maritimo et Navali*, 2nd ed. (London, 1677), 31.

¹⁵ This comes from Charles Longland's account of his extended law suits against Martin and his heirs in an undated and unsigned petition, probably from 1675, contained in ASF, Auditore dei Benefici Ecclesiastici poi Segreteria del Regio Diritto, 5683.

by English ships in the Mediterranean was already well established by the end of the seventeenth century. Admiralty courts were notorious for legitimating the Mediterranean prizes of English pirates in the late sixteenth century.¹⁶ During England's mid-century wars with the Dutch and French, England's diplomats had asserted that responsibility for determining whether a prize was valid or not lay with the High Court of Admiralty. For instance, in 1668, John Finch told a Tuscan merchant who protested that an English warship had seized one of his vessels that "no prize was Condemn'd without a Court of Admiralty which was ready to hear what he could alledge."¹⁷ There had also been disputes over whether Mediterranean courts could adjudicate English prize cases.¹⁸ The Wars against Louis XIV provided numerous opportunities for other states to contest that jurisdiction and English jurists repeatedly encountered the problem of determining which courts had jurisdiction over prize cases.

Jurisdictional authority over prize cases was a sensitive point during the War of the League of Augsburg and through the eighteenth century.¹⁹ The Act of 1692 for the encouragement of privateers, provided guidelines for the adjudication of prizes taken in the Mediterranean. According to the Act, ships captured within the Strait of Gibraltar were to be taken to Cadiz, Alicante, Messina, or Naples where they were to be turned over to prize commissioners until the Court of Admiralty had determined if the prize was

¹⁶ K. R. Andrews, "Sir Robert Cecil and Mediterranean Plunder," *English Historical Review* 87, no. 344 (July 1972): 513-532.

¹⁷ Finch to Arlington, 26 February/8 March 1668, TNA SP 98/6.

¹⁸ Corbett, *England in the Mediterranean*, 1: 227-228.

¹⁹ Examples of disputes over adjudication of prizes may be found in Marsden, "Early Prize Jurisdiction and Prize Law in England, Part III," 47.

valid.²⁰ The Parliamentary acts and bills that sought to regulate English privateering during the War of the League of Augsburg did not, however, specifically address the question of foreign jurisdiction over prize cases. In part, legislative silence on this point may have been intentional. In a memorandum to Sir William Trumbull on a bill for the encouragement of privateers of 1696, Sir Charles Hedges recorded his reluctance to "mention anything more of the Foreign Courts, it being a tender point and in some measure provided for by the clauses for the Treaties, and also by the proviso for our jurisdiction."²¹ Indeed, jurists and Admiralty courts were inconsistent in their assertions as to where jurisdictional authority over prize cases lay. Shortly after the start of the War of the League of Augsburg, disputes arose between English and Dutch ministers as to whether English courts could try prizes brought into English ports by Dutch ships. Admiralty lawyers firmly opposed proposals that Anglo-Dutch treaties specify that prize cases be heard only by the Admiralty which had issued the captor's commission. Instead, they maintained that Admiralty courts could take cognizance of any prize brought into English ports, in which English property or subjects were involved.²² Nevertheless, Admiralty jurists objected when foreign sovereigns interfered with prizes brought into their ports by English warships and privateers.

²⁰ 4 William and Mary, c. 25, "An Act for continuing the Acts For prohibiting all Trade and Commerce with France and for the encouragement of Privateers," in *Statutes of the Realm: Printed by Command of His Majesty King George the Third...*, vol. 6, 1685-1694, ed. John Raithby (London: George Eyre and Andrew Strahan, 1819), 419-423. On this legislation see also Clark, *The Dutch Alliance and the War against French Trade*, 57-59; Meyer, "English Privateering in the War of 1688 to 1697," 260-261. A commissioner for prize was subsequently appointed at Livorno, as well.

²¹ Hedges to Trumbull, 6 January 1696, in *Report on the Manuscripts of the Marquess of Downshire, Preserved at Easthampstead Park, Berks.*, vol 1, *The Papers of Sir William Trumbull*, ed. E. K. Purnell (London: H. M. Stationery Office, 1924), 610-611.

²² Clark, *The Dutch Alliance*, 34-36.

II. *Contested Jurisdictions*

As diplomats and jurists maintained the Admiralty's claim to sole jurisdiction over English privateers, they extended the authority of the English state and challenged the ability of Mediterranean states to regulate navigation. Once again, the case of William Plowman between 1696 and 1704 highlighted the ambiguity as to where authority lay to determine whether privateers had overstepped the bounds of law and the consequent regulatory difficulties that were inseparable from early modern privateering.²³ This case revolved around whether or not the Grand Duke of Tuscany had the right to punish an English subject for his attacks on French shipping.²⁴ In early 1696, Plowman outfitted the ship *Philip & Mary*, under the command of John Broome, ostensibly to make a trading voyage to Alexandria but with the intention to cruise against French shipping in the Levant. Since the arming of a ship in the port of Livorno violated the neutrality of that port, the Grand Duke, Cosimo III, refused to allow the ship to sail until Plowman had sworn that he would not attack French shipping. In April of that year, Plowman sailed out of Livorno in the company of two other armed merchantmen, the *Charles*, under Charles Pickering, and the *Peace*.²⁵ This expedition would generate severe diplomatic and legal problems for its participants and for the English communities in both Livorno and the

²³ Giacomo Giusti gives a narrative of Plowman's actions and of the subsequent diplomatic and legal disputes between England and Tuscany in "Il Granducato di Toscana e il 'caso Plowman': la difesa della neutralità e la crisi con l'Inghilterra (1696-1707)" (Tesi di Laurea Specialistica, Università degli Studi di Pisa, 2008).

²⁴ Plowman and his supporters recounted their version of his voyage into the Levant and his subsequent prosecution by the Grand Duke in a pamphlet published in 1701, *The Case of Sir Alexander Rigby, William Shepard, and William Plowman: setting for the damages they have suffer'd by the imprisonment of William Plowman; seizure of their effects, and other proceedings of the Grand Duke of Tuscany* (London 1701).

²⁵ Giusti, "Il Granducato di Toscana e il 'caso Plowman'," 35-38.

Levant. Despite his oath, Plowman captured and ransomed three French ships and unsuccessfully attacked others during his six-month voyage through the eastern Mediterranean.²⁶ Returning to Italy, Plowman was apprehended in Rome at the request of the Grand Duke as a subject and pirate. He was transferred to Florence and held in prison there until he had made good the losses sustained by the French, who had held the Grand Duke responsible for Plowman's attacks on French ships.²⁷

Plowman's voyage into the Levant was typical of the thin line between privateering and piracy in the seventeenth century. When Plowman first sailed from Livorno, the English consul in that port, John Burrows, warned of the dubious character of the expedition. In particular, Burrows doubted whether Broome's commission from the Admiralty was valid, since the *Philip & Mary* was a French prize that had never been formally condemned.²⁸ Burrows also suspected that Plowman and Pickering carried commissions only from the Great Duke of Savoy, which would limit English authority over them.²⁹ Like other early modern captains and mariners, Plowman employed a

²⁶ The practice of ransoming prizes back to their masters or owner was of dubious legality, but widespread in the seventeenth and eighteenth century. The practice was forbidden in 1744. See R. G. Marsden, *Documents Relating to Law and Custom of the Sea* (London: Navy Records Society) 2: 225, 430. On the ransoming of prizes by early modern privateers, see also G. N. Clark, *The Dutch Alliance*, 124; Douglas A. Petrie, *The Prize Game: Lawful Looting on the High Seas in the Days of Fighting Sail* (Annapolis: Naval Institute Press, 1999), 19-24.

²⁷ Giusti, "Il Granducato di Toscana e il 'caso Plowman'," 43-51; *The Case of Sir Alexander Rigby, William Shepard, and William Plowman*, 7. Plowman was accused of having attacked French ships while flying the colors of the Grand Duke, but this accusation does not resurface in the ensuing case.

²⁸ Broome's commission was for the *Lusitania*, the ship he commanded before moving to the *Philip & Mary*. Consequently, the commission he carried while sailing under Plowman was technically invalid, *The Answer of the Merchants-Petitioners, and Trustees for the Factory at Legorn, to the Account of Damages, Laid to the Charge of the Grand Duke of Tuscany by Sir Alexander Rigby, Mr. Will. Shepard, and Mr. Will. Plowman...* (London, 1704), 76-80.

²⁹ Burrows to Vernon, Livorno, 21 May 1696, TNA SP 98/18.

variety of legal arguments to excuse and legitimate his behavior.³⁰ Plowman and his supporters emphasized the fact that Broome carried a letter of marque and was thus free to attack French shipping, without questioning whether that commission was strictly valid.³¹ Moreover, although records show that he was clearly behind the *Philip & Mary*'s privateering cruise, Plowman nonetheless argued that he was merely a passenger onboard the ship and thus in no position to determine whether the ship would attack French vessels. He also later claimed that it was the French ships which had been the aggressors and that the *Philip & Mary* had acted in self-defense.³²

In response to Cosimo III's prosecution of Plowman, English officials objected that the Grand Duke had no right to intervene in the legitimate conduct of an English privateer. England's representatives in Tuscany strongly objected to the Grand Duke's seemingly arbitrary and harsh punishment of an English subject. When the Admiralty judge Sir Charles Hedges was asked for his opinion on the case in 1699, he also denied that the Grand Duke had any jurisdiction in a case involving the actions of an English privateer. Hedges clearly accepted Plowman's account of his voyage and expressed his opinion that "the Grand Duke hath no manner of Jurisdiction or legall authority to order the restitution of what his Majestie Subjects have thus taken from the ffrench during the war," the Treaty of Ryswick of 1697 having specified that neither French nor English were liable for losses sustained during the war.³³ Hedges further thought that the English

³⁰ Benton, *A Search for Sovereignty*, 112-120.

³¹ *The Case of Sir Alexander Rigby, William Shepard, and William Plowman*, 4.

³² *Ibid.*, 4-7, 52.

³³ Charles Hedges, "Report concerning Mr. Plowman, to the Lords Judges," 17 or 24 July 1699, BL Add. MS 25098, f. 174v.

king had every right to demand compensation of the Grand Duke for Plowman's losses, since "his rights are diminished and his authority circumscribed ... for an English privateer acts by the Kings authority and is accountable to his Majesty alone for the prizes he shall take."³⁴ Plowman and his supporters offered a further explanation for why the Grand Duke could not exercise jurisdiction over the prizes in question. According to Plowman, the Grand Duke of Tuscany "never did nor can pretend to a title of Dominion over the *Mediterranean* Sea." Since the Grand Duke had no authority over the high seas, the courts of Tuscany were incompetent to hear a case concerning the actions of the subjects of other princes, who were liable in the first instance "to the Sentence of their lawful Sovereigns."³⁵

English arguments regarding Cosimo III's jurisdiction over Plowman's attacks on French shipping missed the actual basis of the Grand Duke's case against the English merchant. The Grand Duke and his officials prosecuted Plowman for his "breach of faith," by which he broke his oath to a sovereign prince and violated Tuscan neutrality by arming a ship in Livorno.³⁶ According to Tuscan officials, Plowman had committed a crime of *laesa maiestas* by violating the honor of the Grand Duke.³⁷ An anonymous letter, perhaps written by one of the English merchants at Livorno who defended Cosimo III's conduct towards Plowman, thus argued that the Grand Duke's prosecution of

³⁴ Ibid, f. 175r.

³⁵ *The Case of Sir Alexander Rigby, William Shepard, and William Plowman*, 37

³⁶ A copy of the Duke's sentence against Plowman with an English translation is given in the pamphlet authored by Plowman's opponents within the English factor at Livorno, *The Answer of the Merchants-Petitioners*, 140-144. See also Giusti, "Il Granducato di Toscana e il 'caso Plowman'," 44-46, 51-57.

³⁷ For this point, see the memorial of Ruberto Maria Zefferini, the Grand Duke's special envoy to London, of 29 March 1705, TNA SP 100/29, which was printed as *The Grand Duke of Tuscany's Proceedings against William Plowman: with Remarks thereupon* (London, 1705), 10-11.

Plowman did not infringe on the Admiralty's jurisdiction over prize cases.³⁸ Although neither Broome nor the *Philip & Mary* carried a proper commission and thus risked punishment as pirates if encountered by enemies, the Grand Duke had refrained from passing judgment on the prizes, Broome and the crew so as not to undermine English jurisdiction. Instead, he prosecuted Plowman alone and then, "not as an English subject, though he was such by birth, but as a naturalized subject of His Highness."³⁹ Tuscan ministers never cited Plowman's Tuscan subjecthood in their arguments for the Grand Duke's right to punish the merchant, probably in order to avoid lending strength to French arguments that he was responsible for the losses they had sustained at Plowman's hands.⁴⁰ Nevertheless, the Grand Duke's case against Plowman centered on his breach of faith and his infraction of Tuscan neutrality, without directly passing judgment on the prizes he had taken. Yet, even if the Tuscans refrained from taking cognizance of Plowman's prizes, they did argue that he had behaved unlawfully at sea.

Although Plowman was prosecuted by the Grand Duke for breaking his word and thus violating Tuscan neutrality, he was apprehended as a pirate. The Livornese attorney

³⁸ This anonymous letter is the Italian copy of an English original that was dispatched to a Signore Magnolfi on 10 May 1705 and is contained within a substantial collection of documents related to the case of Plowman, ASF Mediceo del Principato, 2674. The English resident at Florence, Sir Lambert Blackwell, reported that Magnolfi was a minor official of the Grand Duke who corresponded closely with some of the English merchants at Livorno. It seems likely that the letter was written by one of the English merchants at Livorno or by one of their allies in London since it notes that in their pamphlets the delegates of the English nation at Livorno had considered only the amount of damages claimed by Plowman and not the merits of the case itself. See Blackwell to Hedges, Florence, 5 July 1704, TNA SP 98/21.

³⁹ "...ma S. A. per non intaccare la giurisdizione d'Inghilterra non giudicò quest'Azione, come per certo le leggi delle Nazioni gli avrebbero permesso, ne il Capitano ne gli Uomini, ne il Vassello, ma solamente Plowman non puramente come suddito d'Inghilterra benchè tale forse per nascita, ma come per atto volontario era suddito di S. A.," ASF Mediceo del Principato, 2674.

⁴⁰ Giusti, "Il Granducato di Toscana e il 'caso Plowman'," 49. Tuscan ministers professed to be unable to find any evidence of Plowman's Tuscan subjecthood, see Giraldi to Panciatechi, London, 25 Aug. 1702, BL MS Eg. 1696, f. 232r; Panciatechi to Giraldi, Florence, 23 September 1702, ASF Mediceo del Principato, 4125.

Alessandro Luigi Catelani, who undertook in 1704 to lay out a legal defense of the Grand Duke's proceedings, explained that Plowman had behaved as a pirate and that Tuscan officials were accordingly entitled to punish him for his actions at sea.⁴¹ Catelani reiterated and expanded on earlier arguments that Plowman was guilty of the crime of *laesa maiestas*. However, he also defended the Grand Duke's prosecution of Plowman by highlighting the illegality of the merchant's actions at sea. Catelani emphasized the fact that Plowman had sailed without a commission and that the one carried by Broome had not been issued for the *Philip & Mary*, and was thus invalid. According to Catelani, by attacking the French without a patent, Plowman had acted as "an unlawful Pirate" [*un Pirata arbitrario*] and not as an authorized belligerent. Since Plowman had committed acts of piracy, it was in the power of the prince in whose domain he was captured to punish him and force him to make restitution. Catelani further cited examples from English history and from Molloy's account of maritime law to affirm the right of a neutral prince to punish acts of piracy committed on the high sea and to restore goods to their rightful owners.⁴² Plowman's opponents among the English merchant community at Livorno similarly argued that the lack of a valid commission rendered him a pirate.⁴³

In the seventeenth century, there was no single, accepted definition of what constituted a pirate.⁴⁴ The term thus appears to have been as prescriptive as it was

⁴¹ For background on Catelani's arguments on behalf of the Grand Duke, see Giusti, "Il Granducato di Toscana e il 'caso Plowman'," 76-77.

⁴² "Relazione di Catelani su Plowman," Livorno, 19 March 1704, ASF Mediceo del Principato, 1619.

⁴³ *The Answer of the Merchants-Petitioners*, 52-53

⁴⁴ Anne Pérotin-Dumon, "The Pirate and the Emperor: Power and the Law on the Seas, 1450-1850," in *The Political Economy of Merchant Empires: State Power and World Trade, 1350-1750*, ed. James D. Tracy

descriptive. For Catelani and members of the English factory at Livorno, Plowman's lack of a valid commission established him as a pirate and liable to punishment at the hands of the Grand Duke.⁴⁵ The accusation of piracy thus served to reinforce the disputed jurisdiction of that sovereign over Plowman. The English advocate-general, Sir John Cooke, on the other hand, denied the relevance of Plowman's supposed piracy to the case, since the Grand Duke had punished Plowman only for his "Breach of Promise." Moreover, Cooke argued that "A *Subject of England*, who, during the time of War, *Seizes the Ships of a declared Enemy*, though *non-Commissionated* can be no means be reputed a *Pirate*."⁴⁶ Cooke here follows in a distinction drawn by jurists that separated the duty of all subjects to combat the declared enemy of their sovereign from their right to any property taken during that combat, which was contingent upon being licensed by the state.⁴⁷ This argument was, of course, not applicable if Plowman had really cruised the Levant in search of French prizes. Nevertheless, Cooke's denial of Plowman's piracy disputed the Grand Duke's right to assume jurisdiction over the activities of English privateers.

English arguments regarding the Plowman affair strongly reflect the account that the merchant had given English ministers of his actions. As the full story of Plowman's

(Cambridge: Cambridge University Press: 1991), 203-204 and passim. See also Daniel Heller-Roazen, *The Enemy of All: Piracy and the Law of Nations* (New York: Zone Books, 2009).

⁴⁵ The Admiralty judge Sir Leoline Jenkins offered a similar argument in the late seventeenth century, by which he identified the commission as the key distinction between a pirate, who was subject to the universal jurisdiction of all princes, and a legitimate captain who had acted inappropriately and was answerable to his sovereign alone, see Alfred Rubin, *The Law of Piracy* (Newport, RI: Naval War College Press, 1988), 88-92.

⁴⁶ John Cooke to Hedges, Doctors Commons, 30 May 1704, TNA SP 98/83, f. 100r. This opinion was also printed in *The Answer of the Merchants-Petitioners*, 126.

⁴⁷ Molloy, *De Jure Maritimo et Navali*, 20.

actions came to light, English jurists appear to have reconsidered the case; one opinion solicited from Doctors Commons in 1704 cautiously accepted the Grand Duke's right to punish Plowman's infraction of his neutrality.⁴⁸ The English government never conceded the Tuscan case. Yet they ultimately allowed the case to retreat into the background as strategic concerns intersected with England's legal and diplomatic opposition to the Grand Duke's treatment of Plowman. Political and strategic considerations limited the Crown's ability to enforce a particular interpretation of the legal foundations of privateering in the Mediterranean, but the case of Plowman nevertheless illustrated how Admiralty authority over English privateers clashed with jurisdictions that princes claimed as integral to their sovereignty.

III. *Sovereignty and Neutrality*

As rulers sought to defend their neutrality and to punish violators of that status, they affirmed their ability to shape the commercial conditions of the Mediterranean and established limits to the expansion of English Admiralty jurisdiction. The Grand Duke of Tuscany punished Plowman for breaking his oath not to attack French ships and for thus violating Tuscan neutrality. It was, however, the neutrality of ports and littoral waters that most often proved to be the source of contention between opposing jurisdictional and sovereign claims. The right of neutral princes to restrict combat between belligerents within their ports and harbors was well established by the end of the seventeenth

⁴⁸ See the 8 May 1704 opinion of William Cooper and an anonymous opinion on Plowman's case of 22 May 1704, in *The Manuscripts of His Grace the Duke of Portland*, ed. S. C. Lomas (London: H. M. Stationery Office, 1907), 8:118-120.

century.⁴⁹ The neutrality of ports was directly linked to the fact that they lay under the dominion of their sovereign. As Charles Molloy explained, it was unlawful "to assault, kill, or spoil [an enemy] in a *Haven* or *Peacable Port*," since those fell within the "Empire" of rulers who could determine what was lawful and unlawful within their domains.⁵⁰ Although a convention signed by the French, English, Dutch and Spanish consuls at Livorno in 1691 shifted the basis of Livorno's neutrality from granducal sovereignty to interstate treaty, enforcement of the agreement lay with the Grand Duke alone.⁵¹

By the late seventeenth century, it was widely accepted that the distance of a cannon-shot defined the extent of a port's neutrality, since water within that expanse fell within the physical protection of castles or fortresses.⁵² The Grand Duke of Tuscany thus regularly reminded the representatives of belligerent parties, that he could only enforce the neutrality of the port "by defending all Nations as farre as his Cannon would reach."⁵³ The threat of physical force did not, however, guarantee that the neutrality of a port

⁴⁹ Jessup and Deák, *The Origins*, 249-255.

⁵⁰ Molloy, *De Jure Maritime et Navali*, 8. Alexander Justice reiterated this point when he opined that "No Privateer is to attack an Enemy in a neutral Port," *A General Treatise of the Dominion and Laws of the Sea*, 471

⁵¹ The three articles of the convention of 1691 specified that the warring nations would refrain from hostile acts within the port and would observe regulations designed to ensure the safe passage of ships into and out of the port of Livorno. The agreement was renegotiated and reconfirmed with minor alterations at the start of every major European war through the Seven Years' War. On these conventions and their significance for the evolution of neutrality, see Addobatti, "La neutralità del porto di Livorno in età medicea," *passim*. Cf. Jean-Pierre Filippini, "La graduelle affirmation de la souveraineté du Grand-Duc de Toscane sur le port de Livourne: les édits de neutralité de la période des Habsbourg-Lorraine," *Nuovi studi livornesi* 16 (2009): 23-24.

⁵² H.S.K. Kent, "The Historical Origins of the Three-Mile Limit," 537-538.

⁵³ Blackwell to Nottingham, Pisa, 2 March 1703, TNA SP 98/20. For similar statements from the time of the War of the League of Augsburg, see Addobatti, "La neutralità del porto di Livorno in età medicea," 76.

would be observed; during the Wars of the League of Augsburg and of the Spanish Succession, the commanders of warships and privateers frequently violated the neutrality of Livorno and other ports. The cannon-shot itself was also an imprecise gauge, since observers frequently disagreed as to whether the shot had reached combatants or not.⁵⁴ Seventeenth-century juridical writers like Molloy forbade privateers from preying on ships within neutral ports, but they were not specific as to where authority lay to punish violations of states' neutral waters. Neutral princes might demand restitution of a prize taken within their ports, but the representatives of belligerent states regularly denied that the capture of particular prizes had violated a port's neutrality or insisted that determination of the case lay with the prize courts of the captor's sovereign.

Tuscan efforts to preserve the neutrality of Livorno and to punish those who violated it thus raised the question of how different jurisdictional authorities would relate at that port. In early December 1703, the English privateer *Crowned Nightingale*, under captain Benjamin Fisher, captured the Genoese ship the *Madonna della Guardia*, which was freighted by Tuscan merchants, off the south coast of Tuscany and brought the prize into Livorno. Fisher had, however, violated the convention for the neutrality of Livorno when he sailed out of the port without permission and before his appointed time. Tuscan officials consequently arrested the Genoese prize until it could be decided how to proceed in the matter.⁵⁵ Catelani argued that Fisher's prize was invalid, basing his account on

⁵⁴ On the problems of the "cannon-shot" as a means of enforcing the neutrality of ports, see Walker, "Territorial Waters," 214-215 and Addobbati, "La Neutralità del Porto di Livorno in Età Medicea," pp. 79-80. Livorno's cannon appear to have had some success in maintaining the neutrality of the port: the *Southwell* galley gave up its chase of a Genoese bark in sight of Livorno upon the firing of the harbor's cannon, Blackwell to Nottingham, Livorno, 9 April 1704, TNA SP 98/21.

⁵⁵ Tornaquinci to Montauti, Livorno, 8, 10, 12, and 14 December 1703, ASF Mediceo del Principato, 2224; Blackwell to Nottingham, Pisa, 2 April 1704, TNA SP 98/21

Molloy's discussion of prize law in *De Jure Navali et Maritimo*, which the Italian jurist believed to record "la costituzione dell'Ammiraltà d'Inghilterra."⁵⁶ According to Catelani, the Grand Duke was entitled to seize the Genoese ship and return it to its owners, because according to the law of nations, a prize only fully entered into the possession of the captor after it had been carried "*infra Praesidia*," that is, into a port or haven of his state. If the prize was instead brought into a neutral port, the authorities of that state had the right to seize it and restore it to its owners.⁵⁷ Catelani further argued that Fisher's violation of the neutrality of Livorno and seizure of a neutral ship constituted piratical actions that deserved to be punished by the English Admiralty.⁵⁸ Molloy's account of the law of nations with regard to prize law did not, however, reflect Admiralty practice. Following a conversation with Lambert Blackwell, the English resident, and based on the experience of cases from the War of the League of Augsburg, Catelani admitted that adjudication of the prize lay solely with the English Admiralty, which ultimately confirmed the validity of the prize.⁵⁹

Although the "cannon-shot rule" demarcated the extent of a state's neutral waters, it was also unclear where authority lay to adjudicate prizes taken in contested waters. During the Napoleonic Wars, the Admiralty judge Sir William Scott denied that the High

⁵⁶ Catelani's report on the case of the *Crowned Nightingale* is undated, but comes between letters of 21 and 24 Dec. 1703, ASF Mediceo del Principato, 1619.

⁵⁷ Molloy, *De Jure Navali et Maritimo*, 5-6; Catelani, undated letter between 21 and 24 December 1703, ASF Mediceo del Principato, 1619.

⁵⁸ Catelani, undated letter between 21 and 24 December 1703, ASF Mediceo del Principato, 1619.

⁵⁹ "...essendo io certo, che tocca alla Corte dell'ammiraltà di Londra il dichiarare se quella sia o no buona preda, mediante una sentenza formale, senza che resti arbitrio á chi si sia di prevalere coll'autorità su le leggi fondamentali del regno, e le costituzioni statutarie della marina, per sovvertire il Giudicio, che secondo le prove fatte in processo deve seguirne," 24 December 1704, ASF Mediceo del Principato, 1619. For the condemnation of the *Madonna della Guardia* as a good prize, see TNA HCA 34/25, #59, "*Madonna della Guardia*."

Court had any jurisdiction over prizes taken within the territorial waters of another state. Scott's predecessors did not, however, share the view that the cannon-shot marked the limit of Admiralty jurisdiction as well as the extent of a state's territorial and neutral waters.⁶⁰ The jurisdictional difficulties that arose over disputed prizes are apparent in a diplomatic exchange precipitated by the behavior of John Broome, again in command of a privateering vessel, at the start of the War of the Spanish Succession. In 1704, Broome sailed for the Mediterranean as commander of the *Southwell* Galley but for several weeks he cruised off the Portuguese coast. England's ambassador to Portugal, John Methuen, complained that Broome had hovered just outside the port of Lisbon, within the range of the city's forts, and had there taken multiple prizes, which he then sent into that port. When the Portuguese envoy at London pressed for the discharge of the captured ships, Sir Charles Hedges, then Secretary of State, explained that it was not in the Crown's power to order the restitution of the prizes without a verdict from the High Court of Admiralty but he emphasized the fact that the location of the capture would be taken into consideration by the prize court.⁶¹

The *Southwell* Galley's attack on ships within the port of Lisbon raised the question of whether English or Portuguese courts had jurisdiction over the resulting prize cases. Since Broome had sent his prizes into Lisbon, the Portuguese government was able to arrest them and to begin proceedings to determine whether they had been captured within the confines of the port.⁶² In response to opposition in England to Portuguese

⁶⁰ R. G. Marsden, ed., *Reports of Cases Determined by the High Court of Admiralty and upon Appeal therefrom...* (London: W. Clowes and Sons, 1885), 175; Bourguignon, *Sir William Scott*, 173.

⁶¹ Hedges to Methuen, Whitehall, 7 March 1704, TNA SP 104/108, f. 12v-13v.

⁶² Methuen to Nottingham, Lisbon, 30 April 1704, TNA SP 89/18, f. 98r-v.

courts assuming jurisdiction over Broome's prizes, Methuen explained that the Portuguese government had taken cognizance of these prize cases only so far as to examine whether or not the ships had been taken within a cannon-shot from Lisbon's fortifications. Since the prizes had then been brought into that port, such an inquiry "seems to be to be so indisputably the right of every Prince to examine that I own all the lawyers Opinions in England would very hardly persuade me to change mine."⁶³ He further noted that Admiralty jurisdiction over prize cases had never been disputed in Portugal except when the prize was taken under a fort's protection. Methuen thought that based on "all right & by all Laws" such cases lay in the authority of the prince under whose forts the prize had been taken, but he "would be much governed by the English Lawyers opinion if they would declare that a Portugal ship taking a Prize in the River Thames was to be tried & determined by this Admiralty of Portugal."⁶⁴ In response, Hedges affirmed the "Right of protection, which that King and all other Princes as you observe has a Right to preserve" and expressed his willingness that Portuguese courts determine whether the ships had been taken within the port of Lisbon.⁶⁵

The neutrality of ports and the principle of the "cannon-shot" were legal and diplomatic principles that were widely observed both in the Mediterranean and in the Atlantic world. These customary rules were as applicable in the Levant and in the waters adjacent to Muslim polities as they were in the European waters that have dominated historians' study of early modern maritime law. The nearly universal prevalence of these principles did not, however, preclude controversy as to where authority lay to enforce

⁶³ Methuen, Lisbon, 22 April 1704, TNA SP 89/18, f. 92r- v.

⁶⁴ Methuen to Nottingham, Lisbon, 30 April 1704, TNA SP 89/18, f. 98v.

⁶⁵ Hedges to Methuen, Whitehall, 9 May 1704, TNA SP 104/108, f. 21v-22r.

them. States' dominion over their harbors clashed with the extraterritorial jurisdiction of the Admiralty over English privateers and navigation. As a result, it was not only regulatory custom and varying interpretations of the law of nations that shaped the legal regime of the early modern Mediterranean. Equally important was the fact that the application of legal principles depended on the exercise of sovereign authority. Competing lines of jurisdictional authority thus shaped the legal environment of the Mediterranean, but it was often uncertain how these lines of authority should coexist or what would happen when they intersected.

IV. *The Security of the Aegean*

When European privateers sailed into the eastern Mediterranean, they entered a distinct political space. Surrounded by the territories of the Ottoman Empire, those waters constituted an Ottoman lake that was noticeably less “international” than the western Mediterranean. Despite the growth of the French *caravane* trade, Ottoman subjects provided the bulk of merchant shipping in the Levant; the pass and treaty systems that otherwise defined Mediterranean navigation were less noticeable in a region where Ottoman navigation predominated than they were where European and North African shipping coexisted.⁶⁶ Nevertheless, the spillover of European naval warfare into the Levant at the end of the seventeenth century also revealed the degree to which the eastern Mediterranean shared a common regulatory and legal culture with the western Mediterranean. Studies of European privateering in the Levant have focused on the diplomatic consequences that followed the seizure of Ottoman goods; however, at the

⁶⁶ Greene, *Catholic Pirates and Greek Merchants*, 126, 151-152.

base of legal and diplomatic negotiations over the actions of English privateers and of the Ottoman response to them was the exercise of state authority at sea.⁶⁷ The threat of European privateering to the safety of Ottoman trade led the ministers of that empire to reconceptualize its political authority over Levantine waters. As a result, the imperial context of Ottoman dominance in the eastern Mediterranean further called into question how the jurisdiction of the English Admiralty would fit into and shape the legal regime of that sea.

Although Islamic legal theory did not contain a concept of neutrality comparable to that propounded by European jurists, Ottoman sovereignty over the ports and harbors of the empire turned those sites into effectively neutral spaces with regards to European naval warfare in the Levant.⁶⁸ In this respect, the Islamic legal tradition paralleled European thinking on maritime sovereignty. Islamic jurists placed ports, harbors and coastal waters under the dominion of the state and based jurisdiction on the ability of a ruler to exert force over littoral space from castles, fortresses and watchtowers.⁶⁹ Ottoman officials sought to maintain the security and safety of the empire's ports within these limits and accordingly punished belligerents who committed acts of aggression near or within those ports. Thus, in 1652, the pasha of Aleppo ordered the English nation at Aleppo to pay reparations after the warships that had accompanied a convoy of English

⁶⁷ Cf. Maurits H. van den Boogert, "Redress for Ottoman Victims of European Privateering: A Case against the Dutch in the *Divan-i Hümayun* (1708-1715)," *Turcica* 33 (2001): 91-117.

⁶⁸ On the concept and practice of neutrality within the Islamic legal tradition, see Majid Khadduri, *War and Peace in the Law of Islam* (Baltimore: The Johns Hopkins University Press, 1955), chap. 22, "Neutrality," esp. 251-252.

⁶⁹ Hassan S. Kahlilieh, *Islamic Maritime Law: An Introduction* (Leiden, Boston, Köln: Brill, 1998), 138-148. Islamic maritime law was at least partially rooted in the existing legal traditions of Mediterranean and Red Sea navigation, which may help to account for this similarity in principles regarding maritime sovereignty, see *ibid.*, 11-12.

merchant vessels acted as "Corsares, Pyratts, Disturberers of the Grand Signores Ports, & hinderers of his Profits & the Trade of the place," by preventing French vessels from entering or leaving the port of Scanderoon.⁷⁰ A decade later, when French warships were rumored to have sunk an English vessel within sight of the port of Tunis, John Earlisman complained that the Tunisian government had taken no action against the French merchants in that city. According to Earlisman, if the French had similarly "affronted" any port in the Levant, the Ottomans would have punished the entire nation, as they had the English at Aleppo.⁷¹

During earlier European conflicts, the Ottoman response to belligerent acts committed in the vicinity of ports, as at Scanderoon, had induced the European nations to arrive at temporary truces to avoid violating the security of Ottoman ports or subjects. As William Trumbull, the English ambassador to the Ottoman Empire between 1687 and 1693, recorded, "to the best Information I can have, formerly in times of warr, the Publick Ministers have thought it convenient to keepe a good Correspondence, & to send their orders to the subjects of each Nation residing in these Countries to avoid quarrels, which tended onely to the advantage of the Turkes, who never faild to make both sides pay good summes of money upon such occasion."⁷² Trumbull, however, went on to note that this procedure did not seem appropriate for a war in which the French openly

⁷⁰ Henry Riley to the Council of State, Aleppo, 19 June 1652, TNA SP 97/17, f. 89v-90r.

⁷¹ John Earlisman, Tunis, 17 October 1665, TNA SP 71/26, f. 72r-v

⁷² Trumbull to the Levant Company and Trumbull to Shrewsbury, Constantinople, 19 August 1689, BL Add. MS 72591, f. 27v, 31r-v

challenged the English succession, a matter "of a farr different & much higher Nature."⁷³

Consequently, Levantine waters became a battleground for French and English vessels.

Framing the Levantine dimension of Anglo-French warfare was William III's broader diplomatic campaign against France. English and Dutch ambassadors to the Ottoman Empire were both instructed to try to make peace between the Ottoman Empire and Austria, in order to bring an end to the war between those powers that had waged since 1683 and to free Austria to concentrate its military resources against France.⁷⁴ When William III dispatched the English fleet into the Mediterranean in 1694, he aimed not only to support his allies on the Iberian Peninsula, but also to lend a show of strength to his efforts to encourage the Ottoman Empire to make peace with Austria.⁷⁵ Yet it was the actions of English privateers that dominated England's maritime relations with the Ottoman Empire at the turn of the seventeenth century. Carlo Ruzzini, the Venetian bailo or ambassador at Constantinople, described the effects of the War of the Spanish Succession in the Levant in terms that are equally applicable to the previous conflict. The diplomat described how "Even in this distant Part" the effects of European war were felt. French, English, and Dutch ships carried the war into the Aegean, where they took prizes even in waters adjacent to Ottoman fortresses, and showed no respect for the goods and

⁷³ Ibid., f. 31v.

⁷⁴ On Anglo-Dutch diplomacy to end the Ottoman Empire's war with Austria, see Colin Heywood, "English Diplomacy between Austria and the Ottoman Empire in the war of Sacra Liga, 1684-1699, with special reference to the period 1689-1699" (PhD diss., University of London, 1970); idem., "An Undiplomatic Anglo-Dutch Dispute at the Porte: The Quarrel at Edirne between Coenraad van Hemskerck and Lord Paget (1693)," in *Friends and Rivals*, 59-94; Caroline Finkel, *Osman's Dream: The History of the Ottoman Empire* (New York: Basic Books, 2005), 304, 314.

⁷⁵ "Extract of a letter from Mr. Secretary Trenchard to Mr. [Admiral] Russell," 15 August, 1694, National Maritime Museum: SOU/3, 287. See also Ehrman, *The Navy in the War of William III*, 496-500. There is little evidence to suggest that the presence or absence of English fleets in the Mediterranean seriously affected Ottoman diplomacy.

persons of Ottoman subjects. Both the Ottoman government's demands for reparations for losses sustained by its subjects and its efforts "to prescribe Laws and limits [*prescriber Leggi, e termini*]" to the navigation of European privateers and warships were futile.⁷⁶

The War of the League of Augsburg and its successor conflict thus challenged the ability of the Ottoman Empire to maintain the security of its harbors in the face of an intense European conflict that spilled over into Levantine waters. Ottoman efforts to protect both their ports and their subjects' goods from the effects of European warfare broadly mirrored the responses of other neutral states to that conflict. During the early years of the European war, efforts to safeguard Ottoman subjects were hampered by political turmoil within the empire itself after a series of disastrous defeats at the hands of Austria and its allies led to repeated and violent changes of government.⁷⁷ Nevertheless, in response to the outbreak of Anglo-French hostilities in Levantine waters and the influx of European privateers and warships into the eastern Mediterranean, Ottoman officials repeatedly reiterated their insistence that the belligerents refrain from combat within the empire's ports or harbors and sought to secure the safety of Ottoman passengers and goods upon English and French vessels. In 1690, the Caimacam, the Grand Vizir's lieutenant, complained to Trumbull that English warships had captured French vessels within the port of Smyrna. According to Trumbull, the Ottoman official advised him that

⁷⁶ "Anco in quella lontana Parte riverbera con danno la fiamma dagl'Incendij di tanta Guerra in Europa," "Relazione de Carlo Ruzzini," 15 January 1706, ASV Relazioni dagli Ambasciatori da Constantanopli, 7, f. 32v.

⁷⁷ Masson, *Histoire du commerce français dans le Levant au XVII^e Siècle*, 290. For general narratives of the political state of the Ottoman Empire at the end of the seventeenth century, see Caroline Finkel, *Osman's Dream*, chap. 10, "The Empire Unravels."

"Wee might do what wee pleased with our Enemies in open Sea, but the goods of freinds ought to be restored."⁷⁸

English representatives and Ottoman officials disagreed as to what constituted the extent of Ottoman ports. In the case of 1690 that brought the Caimacam to complain to Trumbull of the conduct of English ships, he protested that French ships had been seized within the gulf of Smyrna, which was held to be part of that city's port. Trumbull observed that "the Turks will not distinguish so Nicely of ports as our Law does in Christendome."⁷⁹ Since fortresses overlooked the mouth of the long, narrow strait leading to that port, the Ottoman government considered the entire bay to constitute a protected place.⁸⁰ During an interview with Trumbull, the Grand Vizir explained that the seizure of French vessels from beneath the castle guarding the gulf of Smyrna "was as much as if they had taken them out of the port."⁸¹ In fact, the Ottomans were not unique in claiming that such protected spaces could extend beyond the "cannon-shot." During the negotiations to establish the convention of neutrality for Livorno in 1691, the Grand Duke professed that he could only enforce that port's neutrality to the distance of a cannon shot, but he simultaneously defined Tuscany's neutral waters to extend beyond that range, within an expanse of sea demarcated by the lines of sight between fortified

⁷⁸ Trumbull to the Levant Company, Pera, 21 December 1690, BL Add. MS 72592, f. 7r. Trumbull gave a similar report of his conversation with the Ottoman minister in a letter to Nottingham from Constantinople of 22 Dece. 1690, BL Add. MS 72592, f. 7v. An Italian translation of the *arz* of the kadi of Smyrna on behalf of the French consul in that city, from October 1690, is contained in TNA SP 105/334, f. 48r.

⁷⁹ Trumbull to Fawkenner, 26 December 1690, BL Add. MS 72592, f. 11v.

⁸⁰ On the fortification of the gulf of Smyrna in the later half of the seventeenth century, see Daniel Goffman, "Izmir: from Village to Colonial Port City," in *The Ottoman City between East and West: Aleppo, Izmir, and Istanbul*, ed. Edhem Eldem, Daniel Goffman, and Bruce Masters (Cambridge: Cambridge University Press, 1999), 105-108.

⁸¹ Trumbull to Raye, Constantinople, 16 January 1691, BL Add. MS 72592, f. 21r.

positions.⁸² Consequently, Ottoman conceptions of the relationship between the protection accorded by fortresses and the extent to which the empire could forbid belligerent acts around its ports appear to have mirrored European ideas regarding the expanse of neutral waters. As at Livorno or other European harbors, the issue of determining whether a ship had been taken within the range of a castle's guns was problematic and it was equally difficult to determine which ship had been the aggressor when both French and English claimed only to have defended themselves from attack.⁸³ Further confusing matters was English adherence during the wars against Louis XIV to the principle that neutral goods found on board enemy ships were good prize.⁸⁴ This view put English representatives at odds with Ottoman ministers who insisted that the goods of Ottoman merchants captured on board French ships were to be returned to their owners.⁸⁵

English diplomats and the directors of the Levant Company nevertheless took the neutrality of Ottoman subjects and harbors seriously. Trumbull repeatedly wrote to both ministers and the Company's directors to urge that English captains be instructed to take care when Ottoman subjects were onboard captured French vessels and to promptly free

⁸² Compare the Ottoman view that the gulf of Smyrna constituted a protected and neutral place to Cosimo III's definition of the waters within sight of Livorno which were to be considered neutral, Addobbati "La Neutralità del Porto di Livorno in Età Medicea," 76-77.

⁸³ Trumbull to Raye, Constantinople, 16 January 1691, BL Add. MS 72592, f. 21r; Trumbull to Nottingham, Constantinople, 3 February 1691, BL Add. MSS 72592, f. 24r-v; Trumbull to Levant Company, Pera, 3 April 1691, BL Add. MS 72592, f. 29v-30v. Both English and French representatives accused their counterparts of bribing Ottoman officials to declare that prizes had been taken within or without ports and harbors; Trumbull to the Levant Company, Pera, 3 April 1691 and Trumbull to Nottingham, Constantinople, 3 April 1691, BL Add. MS 72592, f. 29v, 34v-35r; Chateaneuf to Ponchartrain, Pera, 9 May 1696, AN (Archives Nationales): AE (Affaires Étrangères) B/1/382, f. 130r-v.

⁸⁴ Trumbull to Nottingham, Constantinople, 22 December 1690, BL Add. MS 72592, f. 7v; Kulsrud, *Maritime Neutrality to 1780*, 142.

⁸⁵ van den Boogert, "Redress for Ottoman Victims of European Privateering," 93.

them and their belongings.⁸⁶ The arrival of warships in the Levant in the company of convoys, as well as outbreaks of combat between merchant vessels led, however, to frequent violations of Ottoman ports and subjects. For their part, the directors of the Levant Company repeatedly advised its representatives in the Ottoman Empire to respect the neutrality of Ottoman ports and subjects.⁸⁷ In June 1696, the directors reprimanded the consul and factors at Smyrna for opposing Ottoman orders to restore a French ship captured within that port, since if the ship had been released it “could not have bin lookt upon as any dishonour unto us or a condesention to the French, but only as a respect we were willing to show the Grand Signor’s Ports.”⁸⁸ Upon receiving word of William Plowman’s privateering expedition into the Levant in 1696, the Company’s directors solicited a proclamation from the Lords Justices that forbid privateers from seizing ships or goods belonging to “His Majesties Friends and Allies” and from carrying the commission of another state, “upon Pain of their being Reputed and Punished as Pirates.”⁸⁹

Violations of the security of Ottoman ports produced jurisdictional controversies that paralleled those that arose around European ports like Livorno and Lisbon. In July 1696, Charles Pickering, captain of the privateer *Charles*, captured the French ship

⁸⁶ Trumbull to Shrewsbury and Trumbull to the Levant Company, Constantinople, 9 December 1689, BL Add. MS 72591, f. 60r, 61v; Trumbull to the Levant Company and Trumbull to Nottingham, Constantinople, 21 and 22 December 1690, BL Add. MS 72592, f. 6v, 7v.

⁸⁷ Heywood, “Ottoman Territoriality,” 147.

⁸⁸ Deputy Governor and Directors to Raye, London, 19 June 1696, TNA SP 105/209, f. 37v.

⁸⁹ *By the Lords Justices, a Proclamation ... whereas it hath been represented unto us by the Levant Company* (London, 28 May 1696); Deputy Governor and Directors to Raye, London, 19 June 1696, TNA SP 105/209, f. 38r. On this incident at Smyrna, see also draft letter from Paget to Vernon, Constantinople, 28 February 1696, SOAS Paget Papers, Box 3, Bundle 15, f. 50r-v.

Madonna de Carmen, commanded by captain Henri Boisson, within the port of Limasol on the island of Cyprus and brought the prize to Messina, where he refused to acknowledge the English consul's authority as prize agent.⁹⁰ Trumbull's successor as ambassador, William Paget, initially hoped to clear Pickering, since he had been informed that the French ship had been the aggressor.⁹¹ Conversely, the French ambassador, the Marquis Castagnères de Châteauneuf, pressed the Ottoman government to demand restitution of the *Madonna di Carmine*.⁹² Paget assured the Grand Vizir, Elmas Mehmed Pasha, that the English king "will severely punish the Thieves and Corsairs when he has them in hand," but explained that English warships and privateers carrying commissions from the Admiralty were answerable to that body alone for their transgressions.⁹³ As previous ambassadors had done when the Porte sought to hold the English nation responsible for the losses suffered by Ottoman subjects at the hands of corsairs, Paget sought to absolve himself and the Levant Company from responsibility for Pickering's actions. His arguments also suggested that the High Court of Admiralty was

⁹⁰ John Chamberlayne, Messina, 23 December 1696, TNA SP 98/18; Chateauneuf, Pera, 30 September 1696, AN AE B/I/382, f. 214r. On Pickering's capture of the *Madonna di Carmine* and its aftermath, see also Heywood, "Ottoman Territoriality versus Maritime Usage," 156.

⁹¹ Draft letter from Paget to Raye, Constantinople, 11 November 1696, SOAS Paget Papers, Box 3, Bundle 15, f. 31r; draft letter from Paget to Mavrocordato, Constantinople, SOAS Paget Papers, Box 3, Bundle 16, f. 35r-v; Paget to Pelatia Barnardiston, Constantinople, no date, SOAS Paget Papers, Box 4, Bundle 23.

⁹² Chateauneuf, Pera, 21 October 1696, AN AE B/I/382, f. 216r.

⁹³ "...che anche il Rè mio Signore castiera severemente li Ladri e Corsali quando li può haver in mando; si come altri principi et imperatori giusti castigano nello suo Imperial Dominio i ladri, Corsali, e delinquenti quando li può haver in mano," draft letter from Paget to the Grand Vizir, no date, SOAS Paget Papers, Box 4, Bundle 23; draft letter from Paget to unknown recipient, Constantinople, 13 May 1697, SOAS Paget Papers, Box 3, Bundle 16, f. 12r; draft letter from Paget to Mavrocordato, Constantinople, 29 January 1697, SOAS Paget Papers Box 3, Bundle 16, f. 35r. On Elmas Mehmed Pasha's pro-French inclinations, see Heywood, "English Diplomacy between Austrian and the Ottoman Empire in the war of the Sacra Liga," 241-242.

the proper venue to determine whether the *Madonna di Carmine* was a valid prize and to hold Pickering accountable if it was not.

Ottoman plans to adjudicate the case of the *Madonna di Carmine* and to demand restitution of the ship and its cargo raised serious legal questions. In the fall of 1696, the Caimacam assured Chateauneuf that the case would be brought before the *Divan-i Hümayun* if necessary.⁹⁴ Meanwhile, the Kapudan Pasha, the chief admiral of the Ottoman navy, investigated the case.⁹⁵ However, Chateauneuf reported that the Mufti questioned whether it was legal to hold the English nation responsible for the actions committed by a single individual.⁹⁶ Chateauneuf warned that the English would not observe their promise to obtain the return of Boisson's ship unless ordered to do so by the Porte. The Mufti then conceded that it would be lawful to arrest English vessels in Ottoman ports until the English government had punished Pickering and paid restitution.⁹⁷ In the spring of 1697, the Grand Vizir wrote to the Kapudan Pasha and to Paget to announce that he expected the restitution of Boisson's ship by the time of his

⁹⁴ "...que cette affaire ne pouvoit se finir que par la rigueur de la justice et au Divan du G. Visir," Chateauneuf, Pera 21 October 1696, AN AE B/I/382, f. 216r. Chateauneuf subsequently reported that the Kapudan Pasha "m'a promis qu'il me rendroit bonne justice et qu'il feroit payer aux Anglois la valuer des prises qu'ils ont faites," Chateauneuf to Ponchartrain, 2 January 1697, AN AE B/I/382, f. 243v. See also, Paget, Adrianople, 5 June 1697, TNA: SP 97/20, f. 383v-384r. On the *Divan-i Hümayun* and its role in cases involving European privateers, see van den Boogert, "Redress for Ottoman Victims of European Privateering," passim.

⁹⁵ Chateauneuf to Pontchartrain, Constantinople, 8 February 1697, AN: AE B/I/382, f. 250v-252r.

⁹⁶ Chateauneuf is presumably referring to the *şeyhülislam*, or chief religious officer of the Ottoman Empire, Feyzullah Efendi, who occupied a position of far reaching influence in the late 1690's under Sultan Mustafa II. For Feyzullah Efendi's participation in discussions leading to the peace of Karlowitz, see Heywood, "English Diplomacy between Austrian and the Ottoman Empire in the war of the Sacra Liga," 258-259.

⁹⁷ Chateauneuf to Pontchartrain, Constantinople, 17 March 1697, AN AE B/I/382, f. 257v-258v.

return from that year's campaign.⁹⁸ In response, Paget explained that the English king had already ordered his officials and consuls to take steps to hold Pickering accountable for his actions and reiterated the fact that he did not have authority to restore Boisson's ship. Consequently, he needed time to request new orders as to how he should proceed in the matter.⁹⁹

In contradiction to Chateauneuf's warnings that the English would not discipline Pickering, the High Court of Admiralty's proceedings against the privateer illustrate the extensive measures it could take to regulate the actions of those carrying its commission. In the fall of 1696, merchants from the Levant Company appeared before the Admiralty Court to testify that they had received reports from their factors that Pickering had captured a French ship within the range of Limasol's guns and to warn of the threat this action posed to the Company.¹⁰⁰ In response to the testimony of the Levant merchants, the High Court of Admiralty issued a warrant for the arrest of the *Madonna di Carmine* and caused the Lords of the Admiralty to order Charles Hedges to execute the bond Pickering had given in exchange for his letter of marque.¹⁰¹ With the Admiralty initiating

⁹⁸ Chateauneuf to Pontchartrain, Constantinople, 19 April 1697, AN AE B/I/382, f. 269r-v; "Interpretation de la Lettre du Grand visir Escrite au Capitan Pacha," *ibid.*, f. 279r-v; "Traduction des lettres du Grand Vizir au Capitan Pacha et a l'ambassadeur d'angleterre au Subject de la prise du vaisseau du capitaine Boisson," *ibid.*, 280r-v.

⁹⁹ "Interpretation de la lettre de Monsieur l'ambassadeur d'angleterre au Rais Effendy," Chateauneuf to Pontchartrain, Constantinople, 5 May 1696, AN: AE B/I/382, f. 281r-v, 283r-284r.

¹⁰⁰ Attestation of Sir Thomas Vernon, Thomas Vernon, and George Treadway, 31 October 1696, *Madonna de Carmine* or *Caesar*, TNA HCA 42/6

¹⁰¹ Sir William Trumbull to the Lords of the Admiralty, Whitehall, 30 October 1696, in 'William III: October 1696', *Calendar of State Papers, Domestic Series, of the Reign of William III*, vol. 2, 1696, ed. William John Hardy (London: H. M. Stationery Office, 1913), 407-428; Marsden, *Law and Custom of the Sea*, 2: 173-174. Trumbull further ordered Lambert Blackwell at Livorno to take security for the goods seized by Pickering from the English merchants to whom they had been consigned, and, if necessary, to have the Grand Duke compel them to it, "until it shall be determined in the High Court of Admiralty here to whom the property belongs," Trumbull to Blackwell, Whitehall, 19 February 1697, in the *Calendar of State*

proceedings against Pickering, Ottoman and English courts took up the case of the *Madonna di Carmine* in parallel. The English consul at Livorno, John Burrows attempted to execute the warrant when Pickering and the *Charles* arrived outside that port; however, Pickering refused to enter the port, so Burrows could only relay the High Court of Admiralty's command that Pickering appear before that body to answer for his actions.¹⁰² Meanwhile, the proctors for the Crown and for the Levant Company brought the case of the *Madonna di Carmine* before the High Court of Admiralty and sought to establish that Pickering had forfeited his interest in the prize by seizing it within the port of Limasol and failing to have it officially condemned by an Admiralty court.¹⁰³ Pickering's proctor, in response, denied that the ship had been captured within the port and instead asserted that it had been taken "upon the high and open sea."¹⁰⁴ Charles Hedges, as Judge of the High Court of Admiralty, was not persuaded by Pickering's arguments and, in March 1698, he condemned the *Madonna di Carmine* as a perquisite of the Admiralty, a

Papers, Domestic Series, of the Reign of William III, vol. 3, 1697, ed. William John Hardy (London: H. M. Stationery Office, 1927), 39.

¹⁰² See Burrows to Shrewsbury, Livorno, 25 February 1697 and Burrows's report to Charles Hedges, Livorno, 21 February 1697, TNA SP 98/18. The original of Burrows's report to Hedges appears with the prize court papers for the *Madonna de Carmine* in TNA HCA 42/6.

¹⁰³ Allegation of Mr. Franklin, the Crown's proctor, 13 August 1697, TNA: HCA 46/6, *Madonna de Carmine* or *Caesar*. Forfeiture of rights to a prize was the common penalty for privateers who acted improperly or illegally. The jurist Joseph Story would later describe this practice, "It is a part of the ancient law of the Admiralty, independent of any statute, that captors may, by their misconduct, forfeit the rights of prize; and in such cases the property is condemned to the Government generally," *Notes on the Principles and Practice of Prize Courts*, ed. Thomas Pratt (London: W. Benning, 1854), 32-33.

¹⁰⁴ Allegation of Barrett Smith, Pickering's proctor, 15 February 1698 and Charles Pickering's sworn account of the capture of the French ship, given on board the *Charles* in the road of Livorno, dated 20 May 1697, TNA HCA 42/6, *Madonna de Carmine* or *Caesar*.

decision that was appealed by Pickering. The case appears to have dragged on for another two years before it lapsed from the English courts.¹⁰⁵

Although Ottoman efforts to enforce the security of Levantine ports paralleled widespread early modern and Mediterranean practices, a further attempt to secure the entire Aegean from European privateering instead highlighted the particular political environment of the eastern Mediterranean. Despite its recent military setbacks, the Ottoman Empire still largely encompassed the Aegean and was thus in a position to treat that sea as an Ottoman lake. In June 1696, the Kapudan Pasha, Mezzo Morto Hüseyin Pasha, stopped at Smyrna as the Ottoman fleet sailed into the Aegean.¹⁰⁶ While anchored in the gulf of Smyrna, Mezzo Morto dispatched letters to the kadi and European consuls at that port, informing them that he carried a *hatt-ı şeriff*, or imperial decree, directing him “to adjust & Settle the Extent & Limitts of this port.”¹⁰⁷ He then proceeded to declare that the belligerents were to refrain from hostile acts in Aegean waters within the gulfs of Andros and Kos.¹⁰⁸ Since these islands sit at opposite sides of the Aegean archipelago, a

¹⁰⁵ TNA HCA 34/22, # 152; the course of the case is summarized in TNA IND 1/9016, *Madonna de Carmine* or *Caesar*. As with most prize cases prior to the end of the eighteenth century, Hedges did not provide the rationale behind his decision to condemn the *Madonna di Carmine* as a perquisite of the Admiralty. It is probable, though, that the decision turned both on the capture of the ship within a neutral port, and Pickering's initial failure to bring the prize before the High Court. For a good discussion this evidentiary problem and its significance for eighteenth-century English prize law, see Bourguignon, *Sir William Scott*, 243-245.

¹⁰⁶ Mezzo Morto had been a corsair and Dey of Algiers before becoming an Ottoman admiral, see C. Orhonlu, “Hadjdji Husayn Pasha, known as Mezzomorto,” in *The Encyclopedia of Islam*, vol. 3, *H-Iram*, ed. H. A. R. Gibb and others (Leiden: Brill, 1967), 629.

¹⁰⁷ Consul William Raye to Paget, Smyrna, 19 June 1696, SOAS Paget Papers, Box 5, Bundle 27(iii); Paget to Vernon, Constantinople, 14 December 1696, SOAS Paget Papers, Box 2, Bundle 13, f. 26r; Chateaufort to Pontchartrain, Pera, 10 July 1696, AN AE B/I/382, f. 164r. I have been unable to find a copy of the *hatt-ı şeriff* within European archival materials.

¹⁰⁸ The Italian translation of the Mezzo Morto's order contained in the National Archives reads “Però da qui inanzi le Nave Mercantili, ffrancesi, Inglesi, holandesì, Ragusi, et altre Nave che vengono nelle parti di Turchia incontrati che saranno, dentro delle Bocche d'Andrò, e Coò, debbano lasciare l'inimicitia che

prohibition on combat within a boundary established between them would protect the well-traveled waters between Smyrna and Constantinople. As consul William Raye at Smyrna described Mezzo Morto's order, the Kapudan Pasha had declared that, "from Andro & Stanchoi hither no Acts of Hostility should be committed," and specified that anyone who violated these limits would be obligated to make restitution to the injured party.¹⁰⁹

The Ottoman proposal to secure the Aegean from the effects of European warfare constituted an extension of Ottoman state authority over maritime space. Recent studies on the boundaries of the Ottoman Empire have focused more on the evolution and construction of frontier zones than they have on the demarcation of borders or the delineation of Ottoman maritime space.¹¹⁰ It is thus unclear why Mezzo Morto proposed to establish "limits in the sea" or "limits on the surface of the sea" (*deryada hudud* and *ruy-i deryada hudud*), as a later Ottoman document described the delineation of the

hanno intra di loro essendo stimato li sopradetti luoghi Casa di Salute e Sicurezza." Translations of the letter from Mezzomorto to the consuls of the European nations in Smyrna are contained in TNA SP 105/335, f. 49r and AN AE B/I/382, f. 169r. Colin Heywood reproduces the Italian translation from the National Archives in "Ottoman Territoriality versus Maritime usage," 168.

¹⁰⁹ Raye to Paget, Smyrna, 19 June 1696, SOAS Paget Papers, Box 5, Bundle 27(iii).

¹¹⁰ For instance, the essays in a recent volume on Ottoman frontiers survey the political, economic, and cultural histories of Ottoman frontier regions without considering the formal demarcation of frontiers or asking how the delineation of Ottoman borders related to concurrent processes of border-making in Europe, see A. C. S. Peacock, ed., *The Frontiers of the Ottoman World* (Oxford: Oxford University Press for the British Academy, 2009). For the demarcation of Ottoman territorial borders and the significance of such border-making, see R. A. Abou el-Haj, "The Formal Closure of the Ottoman Frontier in Europe: 1699-1703," *Journal of the American Oriental Society* 89, no. 3 (July- September 1969), 467-475 and the more historically grounded works of Dariusz Kolodziejczyk, *Ottoman-Polish Diplomatic Relations, (15th-18th Century): An Annotated Edition of 'Ahdnames and Other Documents* (Leiden: Brill, 2000) 57-67; Palmira Brummett, "Imagining the Early Modern Ottoman Space, from World History to Piri Reis," in *The Early Modern Ottomans: Remapping the Empire*, ed. Virginia H. Aksan and Daniel Goffman (Cambridge: Cambridge University Press, 2007), 24-26.

waters in which combat was forbidden, or if the idea for this measure was his own.¹¹¹

Efforts to safeguard the Aegean were probably tied to Ottoman military successes in that sea in 1695, when Mezzo Morto defeated a Venetian fleet off Chios, allowing the Ottomans to retake that island.¹¹² With the fleet active in the Aegean, Ottoman ministers may have seen an opportunity not only to protect Ottoman commerce from the effects of European war, but also to exert greater control over Aegean waters. Suggestively, when Mezzo Morto issued his order prohibiting belligerent activity in the Aegean, he also complained that English men of war had given chase to a French vessel within sight of his fleet. Relating this incident to the English dragoman, he asked “what pirate ships they were,” and when advised that they were English men of war, “He demanded if there was war betwixt the King of England & the Grand Signor, that His Ships did Such action in his Sight, & as it were in his ports.”¹¹³

Ottoman efforts to safeguard Aegean waters appear to have been as much an extension of as a departure from existing ideas about maritime sovereignty. Molly Greene evocatively compares Ottoman domination over the Levant to a hydrographic chart, varying in proximity to land.¹¹⁴ In this vein, the Ottomans appear to have concentrated on

¹¹¹ A letter of March 1698 from the grand vezir to the *cadi* at Smyrna repealing the proposed maritime limits speaks of “*deryada hudud tayyin olunup*” or “*constituere limiti in Mare*,” TNA SP 105/334, f. 31v, 32r. A transcription of this document is given in Necmi Ülker, “XVII. Yüzyılın İkinci yarısında İzmir'deki İngiliz Tüccarına dair ticari Problemlerle İlgili Belgeler,” *Belgeler* 14, no. 18 (1989-1992): 298-299. Palmira Brummett explains that *had* (pl. *hudud*) was the usual Ottoman term for “border” or “boundary,” in Brummett, “Imagining the Early Modern Ottoman Space,” 24.

¹¹² Finkel, *Osman's Dream*, 320.

¹¹³ Raye to Paget, Smyrna, 19 June 1696, SOAS Paget Papers, Box 5, Bundle 27(iii).

¹¹⁴ Molly Greene, “The Ottomans in the Mediterranean,” in *The Early Modern Ottomans*, 116. According to the historian M. Nicolas Vatin, at least for the sixteenth century, “le concept d' ‘eaux territoriales’ était inconnu” to the Ottomans, cited in Heywood, “Ottoman Territoriality versus Maritime Usage,” 148, especially n. 15.

securing particular harbors within the Aegean rather than the sea as a whole. Both Paget and Raye reported that the Kapudan Pasha had been directed to establish “the Extent & Limitts” of the port of Smyrna. Chateauneuf reported that the Kapudan Pasha was ordered to prevent European vessels from fighting “near the ports of the Grand Signore.”¹¹⁵ The letter from Mezzo Morto to the consuls at Smyrna similarly tied the prohibition on hostile acts in the Aegean to the security of Ottoman ports. The letter thus observed that the maritime warfare of Christian nations at peace with the Ottoman Empire had been carried into parts of the Ottoman Empire and that the belligerents had fought “in front of the Castels and Ports where they arrived.” Consequently, the places within the prescribed limits were to be considered “Casa di Salute, e Sicurezza,” within which the ships of the belligerent powers were to refrain from acts of violence.¹¹⁶ Chateauneuf reported that the Kapudan Pasha had “fixed the places at the sight of which the French, English and Dutch ought not to fight one another within the States of the Sultan.”¹¹⁷

Although the extension and demarcation of boundaries within which the European powers were forbidden to engage in combat built on existing ideas regarding the security

¹¹⁵ William Raye to Paget, Smyrna, 19 June 1696, SOAS Paget Papers, Box 5, Bundle 27(iii); Paget to Vernon, Constantinople, 14 December 1696, SOAS Paget Papers, Box 2, Bundle 13, f. 26r. Chateauneuf reported that “Le Grand Seigneur a commis le Capitan Pacha pour empecher les Vaisseaux François, Anglois et hollandois d’entreprendre rein les uns contres les autres auprez des ports du G. Seigneur,” Chateauneuf to Ponchartrain, Pera, 9 May 1696, AN AE B/I/382, f. 129r.

¹¹⁶ “...avanti li Castelli, e Porti ove arrivano,” “Traduttione della Lettera Scritta dal Chusein Pasha al Signore Console toccante li pretesi Limiti d’Andro, e Coos, ò sia Stancoi,” June 1696, TNA SP 105/334, f. 49r. A French translation of this document may be found in, “Lettre Du Capitan Pacha au Consul De france a Smirne,” AN AE B/I/382, f. 169r.

¹¹⁷ “...il a même fixé les lieux a le veüe desquels les françois Anglois et Hollandois ne doivent rien entreprendre les uns contres les autres dans les Estats du Grand Seigneur,” Chateauneuf to Pontchartrain, Pera, 10 July 1696, AN AE B/I/382, f. 164r.

of ports, efforts to safeguard the Aegean also extended the empire's sovereignty over waters beyond the control of its ports and fortresses. There is evidence to suggest that the Ottomans viewed the confined waters of the Aegean to be under Ottoman sovereignty. The Porte's chief dragoman, Alexander Mavrocordatos, wrote Paget that, regarding the controversies caused by English attacks on French ships, "the sublime Porte desires its seas to be peaceful, so that trade is tranquil and safe, and the benefits [thereof] common to all its allies."¹¹⁸

Ottoman declarations which drew a line across the Aegean to establish the security of that sea were part of a larger process in which the extent of states' maritime sovereignty was contested and negotiated.¹¹⁹ Just as Ottoman concern for the security of ports mirrored wider Mediterranean and Atlantic practices, so the delineation of wider neutral waters also had European parallels. More particularly, during the wars against Louis XIV, the extent of neutral waters was fiercely debated among European states. In 1691, Denmark sought to secure the neutrality of the Baltic by claiming sovereignty over the seas between the Jutland peninsula and Norway.¹²⁰ The French ambassador to Denmark responded to this declaration by arguing that such territorial limits were usually limited to the distance of a cannon shot and that he would concede, at most, three

¹¹⁸ "...la felice Porta desidera li suoi mari pacifici, a finche il traffico sia tranquillo, e pacato, e l'utile comune alle Nationi sue confederate," Mavrocordato to Paget, Adrianople, 21 December 1697, SOAS Paget Papers, Box 14, Bundle 64(i), f. 15r. For another example of the expression "suoi mari," see "con intentione di fare fiorire il traffico nelli suoi mari," Mavrocordato to Paget, Adrianople, 4 February 1697, SOAS Paget Papers, Box 14, Bundle 64(i), f. 16r.

¹¹⁹ This proposal also receives brief mention in Clark, *The War against French Trade*, 118 and Masson, *Histoire du commerce français dan le Levant au XVII^e Siècle*, 290.

¹²⁰ Fulton, *The Sovereignty of the Sea*, 528-529; Clark, *The Dutch Alliance*, 118.

miles.¹²¹ Nevertheless, when English officials responded to Ottoman efforts to bar European naval warfare from the Aegean, they cited the cannon-shot as a feature of the law of nations that was universally binding. In this respect, the Mediterranean was integral to wider debates over how far the sovereignty of territorial state extended out to sea.

Despite the claims to sovereignty over the British Seas that England had historically made, English diplomats and ministers in the seventeenth century showed little willingness to accept Ottoman efforts to secure the Aegean against Anglo-French warfare. Paget initially advised Raye to tell Mezzo Morto that the English would be willing to comply with his orders forbidding combat in the Aegean, provided that the French do the same.¹²² Paget admitted that this initial response was intended mainly “to quiet the Captain Pasha.” The capture of a French vessel within the prescribed limits by an English warship in the fall of 1696, however, caused Mezzo Morto to press Paget for English observance of the Sultan's orders. In response, Paget protested that he had been commanded to comply with Ottoman orders “as far as was consistent with the laws & Customs practised at Sea.” Since custom determined that “the limits of all Ports” were established by the distance of a cannon-shot, he could not consent to the extension of Ottoman neutral waters beyond that point.¹²³ In a later letter to Mavrocordatos, Paget reiterated this point and further explained why he could not accept any restrictions on

¹²¹ Kent, “Historical Origins of the Three-Mile Limit,” 541-542.

¹²² Paget, Constantinople, 10 July 1696 and 14 December 1696, TNA SP 97/20, f. 351r, 358r; Paget to Vernon, Constantinople, 10/20 July 1696, SOAS Paget Papers, Box 2, Bundle 13, f. 40v.

¹²³ Paget to Vernon, Constantinople, 14 December 1696, TNA SP 97/20, f. 351r, 358r-v. A copy of this later may be found at SOAS Paget Papers, Box 2, Folder 13, f. 26v.

English attacks on French shipping outside of Ottoman ports. When Paget argued that “Princes, in their own Dominions, can impose what laws they please, but outside those precincts other Powers are not constrained to observe them,” he echoed the increasingly prevalent juridical argument that the cannon shot established the maximum distance at which a state could exercise territorial control over its littoral waters and, in the process, denied Ottoman sovereignty over Aegean waters.¹²⁴ English ministers, meanwhile, supported Paget’s opposition to Ottoman efforts to redefine that extent of the empire’s ports.¹²⁵

For the Ottomans, the drawing of a line across the Aegean to define it as a secure space raised the problem of how to enforce the peace of an expansive sea. Indeed, despite its naval successes against Venice, the Ottoman Empire’s control of the Aegean archipelago remained tenuous. Paget emphasized the Ottomans’ lack of effective control over the Aegean when he observed that, “tho all the tract be cald the Turks,” Venetian forces operating in the Peloponnese and the Aegean “take tribute of many of those inward Islands without any opposition.”¹²⁶ The Ottoman government assigned additional frigates to patrol the Archipelago in order to control combat between European vessels; however, the Ottoman navy was not large enough to enforce the Kapudan Pasha’s orders, particularly when it was engaged in a war with Venice.¹²⁷ Consequently, the Porte

¹²⁴ “Li Prencipi, nelli loro Dominij, possono imponere tali Leggi che vorranno, mà fuori di quelli precinti non sono altri Potentati costretti ad osservarle,” draft letter from Paget to Mavro Cordato, Constantinople, 19 February 1697, SOAS: Paget Papers, Box 3, Bundle 16, f. 21r-v; Walker, “Territorial Waters,” 210-212.

¹²⁵ “Minutes of the proceedings of the Lords Justices,” Whitehall, 7 October 1697 in the *Calendar of State Papers, Domestic Series, of the Reign of William III*, vol. 3, 1697, 417.

¹²⁶ Paget, Adrianople, 5 June 1697, TNA SP 97/20, f. 385r-v.

¹²⁷ Heywood, “The *Blackham* Galley,” 424, esp. n. #53. On the limits of Ottoman control over the Aegean archipelago, see also, Heywood, “Ottoman Territoriality versus Maritime Usage,” 157-159.

confined itself to detaining English vessels that were suspected of violating Ottoman ports or subjects when they could be arrested in port.

Ottoman efforts to forbid belligerents from fighting in the Aegean thus raised the persistent question of how law and sovereignty were to be exercised at sea in the early modern world. They also led Ottoman officials to claim jurisdiction over acts committed on the high seas. Despite Paget's unwillingness to accept the extension of Ottoman neutral waters beyond the range of a cannon-shot, the Porte took steps to enforce the limits established by the Kapudan Pasha. In the spring of 1697, the *Blackham*, a well-armed merchant vessel under the command of Captain Charles Newman, captured a French vessel off the island of Tenedos, just outside the Dardanelles.¹²⁸ Following the *Blackham's* capture of the ship, the officials on Tenedos witnessed the reselling of the ship back to its master and confirmed the validity of the prize. Upon learning of Newman's capture of the French vessel, Paget subsequently advised the captain to leave Ottoman waters as soon as possible.¹²⁹ Nevertheless, the *Blackham* was subsequently detained at Smyrna for attacking a French ship "within the Limits;" the ship would remain sequestered for the remainder of the year as negotiations ensued over the payment of restitution to the French and to an Ottoman pasha whose goods were lost as a result of the ship's seizure.¹³⁰

¹²⁸ Chateaufeuf reported that five French vessels were taken near Tenedos in violation of the Kapudan Pasha's order. One of these was taken by the privateer *Panther* but there is no record of the other three in English sources, see Chateaufeuf, Pera 15 August 1696, AN AE B/1/382, f. 174r; Heywood, "The *Blackham* Galley," 422-424.

¹²⁹ See also Raye to Paget, Smyrna, 25 May 1697, SOAS Paget Papers, Box 5, Bundle 27(iv).

¹³⁰ The history of the *Blackham's* voyage into the Levant and of the diplomatic controversy that it caused it fully analyzed in Heywood, "The *Blackham* Galley," pp. 409-438. See also Paget, Pera, September 24 1697, TNA SP 97/21, f. 32r.

The cases of the *Madonna di Carmine* and of the *Blackham* demonstrate the willingness and ability of Ottoman officials to assume jurisdiction over maritime affairs. In response to accusations from Newman that he had failed to prevent the arrest of the *Blackham*, Paget responded, “I will dispute the lawfulness of your act but I can tel you, that the Vizir is not of your mind and you are not in my, but his dominions, and he will it seems do what he pleases without reflecting how your owners will like it.”¹³¹ Despite the relative limits to Ottoman control over the Aegean and Levantine waters in the late seventeenth century, these cases revealed the continued ability of the Ottoman Empire to shape the legal regime of that sea.

Ultimately, it was the emergence of a new Ottoman ministry that brought the case of the *Madonna di Carmine* to a close. Following the death of the francophilic Grand Vizir Elmas Mehmed Pasha at the battle of Zenta in September 1697, his successor, Amcazade Huseyin Pasha, seems to have had little interest in pursuing the cases against English ships.¹³² In particular, he declined to pursue the case against Pickering and the English nation after Paget pointed out that the newly signed Treaty of Ryswick mandated that all damages and injuries suffered by the French and English during the war were to be ignored. In response to the new Grand Vizir’s suggestion that the French drop their dispute with the English over Boisson’s ship, Chateauneuf protested that the *Madonna di Carmine* had been captured “under the guns of the fortresses of the Grand Signor, who alone has the right to avenge this injury.” He further argued that the Treaty of Ryswick

¹³¹ Draft letter from Paget to Newman, Adrianople, 5 June 1697, SOAS: Paget Papers, Box 3, Bundle 16, f. 44r-v.

¹³² On the significance of the battle of Zenta and subsequent changes in the Ottoman ministry for Anglo-Ottoman relations, see Heywood, “English Diplomacy between Austrian and the Ottoman Empire in the war of the Sacra Liga,” 245, 252-254.

did not impact the right of the empire to protect the honor of its ports and that the treaty postdated orders for the restitution of the *Madonna di Carmine*.¹³³ Nevertheless, it appears that Chateauneuf's arguments were without effect. The *Blackham*, meanwhile, was released in January 1698, after it was learned that it had actually been arrested for an action committed by another privateer.¹³⁴

More significantly, in March 1698, the sultan repealed the limits that had been established in the Aegean. The decree recounted that Ottoman ministers had sought to establish maritime limits within which the ships and subjects of the belligerent powers were to refrain from combat, since established custom allowed ships to fight so long as they did so without the range of the cannon of ports and fortresses. This effort, however, had been “contrary to ancient customs and to the imperial capitulations” [*adet-i qadime ve ahdname-i hümayuna mugayir*] and had violated “the rules of merchants” [*bazergaların nizamına muhill*]. Furthermore, the ambassadors of the Christian nations had refused to concede to the limits.¹³⁵ Consequently, the limits were repealed as contrary to custom and to the Capitulations. Such attention to “customs” suggests that the Levant was part of a larger, Mediterranean regulatory sphere. Nonetheless, Ottoman claims to

¹³³ “je luy fis connoistre que cela ne se pouvoit pas parce que le fondement de la demande que Je faisois icy aux Anglois estoit qu’ils avoient faits leur prises sous le Canon des forteresses du Grand Seigneur qui seul a droit de Vanger cette injure,” Chateauneuf to Ponchartrain, Adrianople, 31 January 1698, AN AE B/I/382, f. 334r-336r. See also, Paget, Pera, 24 September 1697, TNA SP 97/21, f. 31r-32r.

¹³⁴ “Traduttione del Commandamento del Gran Signore diritto al Caddi di Smirne per la liberatione della Nave nominata Blackham ffrigat,” December 1697, TNA SP 105/334, f. 51r. Chateauneuf admitted that the Ottoman chancellor had erred in its by attributing the wrong capture to the *Blackham*, but he insisted that this mistake was not important since the English ship had seized another French vessel, Chateauneuf to Ponchartrain, Constantinople, 28 December 1697, AN AE B/I/382, f. 328v-329r.

¹³⁵ The transcriptions here are derived from Ülker, “XVII. Yüzyılın İkinci yarısında İzmir'deki İngiliz Tüccarına dair ticari Problemlerle İlgili Belgeler,” 299. The contemporary Italian translation of this document renders these phrases as “essendo contrario all'Imperial Capitulationi, et antica Consuetudine” and “dando disturbo alle Regole delli Mercanti,” TNA SP 105/334, f. 32r.

sovereignty in the Aegean highlight the distinct political environment of eastern Mediterranean waters.

V. Conclusion

Despite the expansion of English naval power and empire into the Mediterranean, the High Court of Admiralty remained just one source of legal authority in a sea of many. Admiralty jurisdiction over privateers and prize cases transmitted the extraterritorial authority of the English state throughout the Mediterranean. The cases of William Plowman and Charles Pickering raised the question, however, of how the jurisdictional claims of English courts would coexist with those of Mediterranean sovereigns. In both these cases, Mediterranean governments challenged the jurisdiction of the Admiralty court over English ships and demonstrated their ability to shape the legal and regulatory environment of that sea.

At the outbreak of the War of the Spanish Succession, Ottoman ministers again sought to establish the neutrality of the Aegean. Paget's successor as English ambassador to the Ottoman Empire, Sir Robert Sutton, reported in 1704 that Dutch privateers had been carrying their prizes into Smyrna and selling them there, leading to complaints that they were blocking access to the port. In response, it was suggested to the Grand Vizir that he reestablish the "ordinance" from the previous war "for the Neutrality & freedome of the Archipelago within the Limits." The dragoman Mavrocordatos was directed to meet with the ambassadors of the belligerent powers, to whom he explained that it was harmful to both the Sultan's "Decorum" and to his revenues that ships should be taken "in the very mouth" of his ports. Consequently, "it was the Sultan's intention to provide

for the security of Merchant ships in the Seas near his Ports.” When Sutton inquired as to how far the neutrality of Ottoman ports should extend, Mavrocordatos replied that he was uncertain, “but hinted at the Limits, which they would have prescribed in the Late war.”¹³⁶ In response, English ministers again objected to a declaration that appeared both unenforceable and of greater benefit to the French than the English. Sutton received instructions advising him that, “her Majesty cannot, by such a concession as is now proposed debar herself, contrary to the Laws of Nations and the known practice of Warr, of the freedome of destroying her Ennemies in the open Seas, whenever her Ships of Warr meet them.”¹³⁷ Instead, English vessels would continue to forbear attacking French ships only when they were under the protection of Ottoman castles and forts.

Ottoman efforts to protect the Aegean from European warfare constituted a claim to sovereignty over that sea. After an English ship captured a French vessel in the Aegean in the spring of 1705, Ottoman ministers demonstrated their jurisdiction over Aegean waters by intervening in the case.¹³⁸ While sailing from Smyrna to Constantinople, the *King William* galley captured a small French merchant vessel in the Aegean, releasing the French vessel after its master agreed to leave his purser with the English crew as a pledge for payment to ransom his ship. When the English ship arrived in Constantinople, the French learned that the purser was being held hostage and demanded his release. Sutton defended the actions of the *King William*’s master, asserted that the French ship had been

¹³⁶ Sutton, Pera, 8 November 1709, TNA SP 97/21, f. 182r-v

¹³⁷ To Sutton, 23 January 1705, TNA SP 97/20, f. 181v. These instructions appear to be based on the advice the Levant Company offered in a letter to Sir Charles Hedges as to how to proceed in the matter of the maritime limits, Levant Company to Hedges, no date, TNA SP 105/145, 313-314

¹³⁸ “Sir Robert Suttons account concerning the King William which took a french Prize, & the Purser a Hostage for the ransome releasd by the Turks,” 11 May 1705, TNA SP 97/21, f. 194r-199v.

taken in a “Lawfull Place” and argued that hostages were commonly carried into neutral ports in Europe.¹³⁹ Conversely, the French ambassador objected that the French ship “was taken in the Gr. Signor’s Port, there having been certain Limits settled, within which it was not allowed to assault one anothers vessels.” He then carried the matter before the Grand Vizir, who took possession of the hostage until the affair could be settled.¹⁴⁰ The Vizier subsequently ordered the French and English ambassadors to present their cases before the *kadi-asker* of Rumeli, the chief judge of the empire’s European provinces, who also passed judgment on cases brought before the *Divan-i Hümayun*.¹⁴¹ Sutton refused, thinking that Ottoman adjudication of the prize case was merely a means to settle “the Sea Limits” and “to condemn the Prize as invalid by their Law.”¹⁴² In a final effort to prevent the case going before an Ottoman court, Sutton denied that the Ottomans could take cognizance of that matter, since “the matter in dispute having passed at Sea was not cognizable by their Law, which is a stranger to such affairs, there being no Instances thereof found therein; But was to be decided by the Law & practice of Nations.”¹⁴³ Ottoman ministers released the French purser and advised Sutton that the master of the English ship would have his case heard whenever he chose to bring it before the *kadi-asker*.

¹³⁹ Ibid., f. 194v-197v (folios 195 and 196 are not included in this document).

¹⁴⁰ Ibid., f. 197r. The French ambassador additionally complained that the *King William* violated a reciprocal agreement the master had made at Smyrna not to assault some French vessels then outside that port. Sutton responded that this agreement was valid only for the Gulf of Smyrna and did not extend to other ships the *King William* might meet at sea.

¹⁴¹ van den Boogert, “Redress for Ottoman Victims of European Privateering,” 94.

¹⁴² “Sir Robert Suttons account concerning the King William which took a french Prize, & the Purser a Hostage for the ransome releasd by the Turks,” 11 May 1705, TNA SP 97/21 f. 199r-v.

¹⁴³ Ibid., f. 199v.

Sutton's negotiations with Ottoman officials over the *King William* turned on the question of whether Ottoman courts could assume jurisdiction over a prize taken at sea by an English privateer. Significantly, both Ottoman officials and European representatives maintained that maritime relations in the Levant were governed by established custom and by mutually binding agreements. Sutton and other English officials appealed to the law of nations to uphold their interpretation of the rights of belligerents in the Levantine waters. Their Ottoman counterparts, meanwhile, argued for the reciprocity of the capitulatory agreements with European states in order to defend the property of Ottoman subjects seized by European privateers from enemy vessels.¹⁴⁴ The case of the *King William* illustrated the extent to which questions of sovereign and jurisdictional authority were central to the legal regulation of navigation and privateering in the Levant. Sutton was clearly incorrect when he argued that maritime acts had no place in Ottoman law.¹⁴⁵ Yet his attempt to deny the validity of foreign regulations and of foreign law in a case involving an English prize was typical of wider debates as to where legal authority at sea lay.

Sutton's arguments in the case of the *King William* are thus comparable to those made by other English representatives when they denied the authority of other states to involve themselves in prize cases. In 1709, Britain's consul at Naples, John Fleetwood, reported that Neapolitan courts had heard cases brought by neutral merchants against British privateers who had seized their goods and ships. The privateers had taken the neutral vessels as prize for carrying contraband in the form of grain destined for France.

¹⁴⁴ See also van den Boogert, "Redress for Ottoman Victims of European Privateering," 91-93.

¹⁴⁵ Kahlilieh, *Islamic Maritime Law*, passim.

The question of whether food commodities were good prize or not was, however, a particularly contentious question during the wars against Louis XIV, leading Fleetwood to request direction from London, “in case any of them [neutral ships] should be taken & brought in here, what to do with the Vessells, for the Captors that take them pretend Vessell & all is forfeited, & their Custom here is to returne the Barks to the Captaines.”¹⁴⁶ As with the case of the *King William* in the Ottoman Empire, at issue was whether Neapolitan courts could take cognizance of prizes captured by British ships and whose maritime laws should regulate prize cases. Fleetwood advised the government at Naples that only the English Admiralty could determine the legitimacy of prizes taken by English ships and he requested a message from Lord High Admiral confirming the Admiralty’s sole jurisdiction over such prize cases.¹⁴⁷

Disputes over the adjudication of prizes at Naples led to the most forceful declaration of the Admiralty’s jurisdiction over prize cases to emerge out of the wars against Louis XIV. In August 1709, Everard Exton, proctor for the Lord High Admiral, appeared before the High Court of Admiralty to advise the judges that the government of Naples had adjudicated prize cases concerning ships and goods brought into that port by British privateers. Exton complained of this “great Incroachment upon the Jurisdiction of her Majesties High Court of Admiralty of England” which alone had cognizance of such cases and further argued that the Neapolitan government had acted contrary to the “Laws of Nations it being a known and established Rule among all trading nations,” that

¹⁴⁶ Copy of letter from Fleetwood, Naples, 30 April 1709, TNA ADM 1/3667, f. 446r-v. On the issue of different interpretations of what constituted contraband during the Wars of the League of Augsburg and of the Spanish Succession, see Clark, *The Dutch Alliance*, 116-118 and on the status of provisions as contraband more generally, Kulsrud, *Maritime Neutrality to 1780*, 266-280.

¹⁴⁷ Fleetwood, Naples, 4 June 1709, TNA ADM 1/3667, f. 446v-447r.

privateers were obliged to bring their prizes before the admiralties that had granted their commissions. Consequently, the judge of the High Court declared the British privateers were required “to bring all prizes by them taken in the Mediterranean or elsewhere to judgment in the high court of Admiralty ... and that by the laws of nations no prince or state whatsoever ought to take cognizance of any prizes taken by British privateers.”¹⁴⁸

Foreign officials did not necessarily accept the Admiralty's claim to jurisdiction over all prizes taken by British ships. Fleetwood alerted the Secretary of State, Lord Dartmouth, in late 1710 that Austrian officials at Naples continued to pass judgment over prizes brought in by British warships and privateers. When Fleetwood objected that the Lord High Admiral had established that cognizance of such prize cases rested solely with “that high Court from whence the Captains had their commissions,” a Neapolitan minister responded that, “he knew neither Queen of great Britain nor lord high Admiral, but Charles the 3d & that we were at Naples & must live according to the lawes of Naples.”¹⁴⁹ Despite Exton's arguments and the ruling of the High Court of Admiralty, there was, in fact, no general agreement as to where jurisdiction over prize cases properly lay.¹⁵⁰ In the early years of the War of the League of Augsburg, Admiralty judges maintained their jurisdiction over the property of English subjects that was in prizes brought into English ports by foreign privateers. Similarly, Neapolitan courts appear to have claimed the right to adjudicate prizes involving neutral parties. Although the High

¹⁴⁸ TNA ADM 1/3667, f. 445r. This letter is also printed in Marsden, *Law and Custom of the Sea*, 2: 213-214.

¹⁴⁹ Fleetwood to Dartmouth, Naples, 2 December 1719, TNA SP 93/3, f. 82v; see also the copy of Fleetwood's Memorial to the Vice-Roy of Naples, contained in his dispatch of 2 December 1710, TNA SP 100/29.

¹⁵⁰ Luca lo Basso, *In traccia de' legni nemici: corsari Europei nel Mediterraneo del Settecento* (Ventimiglia: Philobiblon Edizioni, 2002), 114-115.

Court of Admiralty maintained that it possessed a unilateral jurisdiction over prizes taken by ships bearing its commission, foreign states and foreign courts were not obligated to accept this claim.

As in the Atlantic and Indian Oceans, the interaction of coexisting and potentially conflicting sovereign jurisdictions over maritime crimes and causes defined the legal organization of navigation in the Mediterranean. Particularly, the regulatory and legal requirements of the wars against Louis XIV extended the jurisdictional authority of Admiralty courts around the early-modern world. Yet, neither in the Atlantic or Indian Oceans nor in the Mediterranean was the expansion of English legal authority a unilateral or unidirectional process. While Ottoman efforts to establish the neutrality of the Aegean echoed Danish policy in the Baltic, the neutrality of Livorno found an Atlantic parallel in the neutrality that the king of the African state of Whydah established at his port of Glehue at the start of the War of the Spanish Succession.¹⁵¹ Like the Grand Duke of Tuscany, the ruler of Whydah obliged Dutch, English, and French representatives to sign a treaty affirming the neutrality of Glehue and agreeing not to commit any hostilities within sight of the port.¹⁵² In the Mediterranean, as in more distant seas, the pressures of naval warfare and state competition led states and empires to take steps to regulate maritime violence, both in their ports and on the high seas. In all these oceanic environments, English Admiralty courts were becoming increasingly central to the

¹⁵¹ On the neutrality of Whydah, see Robin Law, “‘Here is No Resisting the Country’: The Realities of Power in Afro-European Relations on the West African ‘Slave Coast’,” *Itinerario* 18, no. 2 (1994): 62. Andrea Addobatti notes the comparability of these neutrality regimes in “Acque territoriali,” 193-194.

¹⁵² Law, “‘Here is No Resisting the Country’,” 62.

organization of navigation and commerce. In none of them, though, did English legal authority dominate.

Chapter 5

Jurisdiction and Sovereignty in the Western Mediterranean, 1713-1744

...for it is natural to consider the vessels of the nation as portions of its territory, especially when they sail in the free seas, since the State preserves its jurisdiction over those vessels.¹

With the growth of British naval power and the corresponding expansion of Admiralty authority in the early eighteenth century, the major issues that faced English shipping in the Mediterranean shifted from the high seas to coastal waters. Prize cases that contrasted the jurisdiction of the British Admiralty with the sovereignty of Mediterranean states over their littoral waters raised questions that ultimately defined the presence of the British state in the inner sea through the eighteenth century. As consuls and diplomats sought to maintain the privileges of British navigation in Mediterranean ports and to sustain Admiralty jurisdiction over crimes committed in foreign harbors, they raised a critical question: did law follow the ship and the subject, or was it instead vested in discrete territorial units? The competition between these coexistent but potentially conflicting conceptions of sovereignty was particularly intense in the Mediterranean, which was ringed by polities that claimed varying degrees of jurisdiction over their coastal waters and where ships generally sailed in sight of land.

¹ Emerich de Vattel, *Le droit des gens, ou principes de la loi naturelle, appliqués à la conduite et aux affaires des nations et des souverains* (Amsterdam, 1758), 2:16, quoted in Daniel Heller-Roazen, *The Enemy of All: Piracy and the Law of Nations* (New York: Zone Books, 2009), 126. Vattel referred to ships as a “portion of territory” in reference to the question of whether children born at sea were to be thought of as natural-born subjects like those born in the territory of the nation to which the ship pertained. Sir Philip Meadows had earlier come to the same conclusion as Vattel, “A Child born at Sea in any of the King's Ships, or other *English* Vessel, Navigation by *English* Master and Crew, is a Native,” in Philip Meadows, *Observations concerning the Dominion and Sovereignty of the Seas: Being an Abstract of the Marine Affairs of England* (London, 1689), 13.

Questions as to where authority lay to police navigation and to try crimes committed in coastal waters were central to the development of oceanic legal regimes around the early modern world. During this period, the expansive extraterritorial jurisdiction of the Admiralty incorporated the Mediterranean into the global expansion of British legal authority and maritime sovereignty. In that sea, as elsewhere, Crown authority and Admiralty jurisdiction followed British ships even into the ports and harbors of foreign states. However, histories of the evolution of maritime sovereignty tend to distinguish the emergence of “territorial waters” within Europe from the broader processes whereby European empires claimed sovereignty over wide swathes of oceanic space and established their extraterritorial authority over trade and navigation.² In part, this division mirrors distinctions drawn by early modern jurists, who understood that the narrow seas of northern Europe and of the Mediterranean allowed for a degree of potential political control that was unattainable in the Atlantic or Indian Oceans.³ Yet, despite geographic and political conditions that distinguished the legal and political environment of the Mediterranean, debates over the extent and limits of maritime sovereignty within that sea largely paralleled those that emerged in other oceanic regions.

² Eliga Gould and Lauren Benton have sought to show how law linked Europe to the wider early modern world by, respectively, historicizing European conceptions of the Atlantic as a distinct legal space and showing the degree to which the expansion of European sovereignty was an uneven and contingent process. However, they both continue to operate within a narrative that concentrates on the diffusion of European law to the wider world, rather than fully integrating Europe into the global development of legal and sovereign regimes. See Gould, “Zones of Law, Zones of Violence: The Legal Geography of the British Atlantic, circa 1772,” *William and Mary Quarterly*, 3rd ser., 60, no. 3 (July 2003): 471-510 and Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400-1900* (Cambridge: Cambridge University Press, 2010).

³ While Grotius denied the legitimacy of any claim to maritime dominium, he also noted that arguments for possession of parts of the sea derived from the Mediterranean, whose narrow gulfs were particularly susceptible to claims of ownership, see Hugo Grotius, *Commentary on the Law of Prize and Booty*, trans. Gwladys L. Williams, ed. Martine Julia van Ittersum (Indianapolis: Liberty Fund, 2006), 351-352.

In the early modern world, princes' sovereignty was vested not only in the dominions over which they ruled, but also in the authority they exercised over their subjects. In this respect, the jurisdiction of the High Court of Admiralty over crimes committed onboard British vessels was as integral to the sovereignty of the British Crown as the authority of Tuscan tribunals over cases arising within the port of Livorno was to the Grand Duke's. At the same time, the Bartolan legal tradition established conceptions of sovereignty over coastal waters that not only collided with those of the Admiralty, but also belied the tenuous situation that prevailed in littoral waters where the sovereignty of Italian polities rested uneasily with northern European naval power.⁴ Further complicating matters, the definition of what constituted territorial waters was fiercely debated throughout the eighteenth century. Thus, it was unclear how the extraterritorial authority of the British state would relate to the sovereignty of Mediterranean rulers over their coastal waters and harbors.

Critical differences that distinguished the Mediterranean's commercial and maritime environment from that of other seas lay behind continuities that linked the development of English navigation in the Mediterranean to its wider expansion. In particular and in stark contrast to the Atlantic and Indian Oceans, the incorporation of Scotland into a British state in 1707 had little impact on the composition of trade from the British Isles to the Mediterranean. The acquisition of Gibraltar and Minorca at the end of the War of the Spanish Succession brought ships belonging to inhabitants of those places under British colors and helped to fuel a further expansion of the use of British

⁴ Michel Bottin, "Frontières et limites maritimes au XVI^e siècle," in *La Frontière des origines à nos jours: actes Journées de la Société internationale d'histoire du droit tenues à Bayonne, les 15, 16, 17 Mai 1997*, ed. Maïté Lafourcade (Bordeaux: Presses Universitaires de Bordeaux, 1998), 28-29.

Mediterranean passes by non-subjects.⁵ Yet, while navigation in the Mediterranean thus illustrated the increasingly multinational character of the British Empire, Scottish merchants were largely absent from that sea. Due to both English competition and to the threat of North African corsairs, Scottish merchants never developed a significant foothold in Mediterranean ports during the seventeenth century.⁶ The opening of England's American plantations to Scottish trade did little to change this situation, probably because Mediterranean trade remained relatively stagnant in comparison to the dramatic growth of Atlantic and Indian Ocean commerce.⁷ A handful of families and trading houses thus dominated England's Levant trade generation to generation while the expansion of Atlantic trade and of the East India Company provided substantial space for Scots to take advantage of the growth of imperial trade.⁸

Despite the different trajectories that characterized the development of the British presence in the Mediterranean and Atlantic and Indian Oceans during the first half of the eighteenth century, similar debates over maritime sovereignty and jurisdiction linked the

⁵ Desmond Gregory, *Minorca, the Illusory Prize: A History of the British Occupations of Minorca between 1708 and 1802* (London and Toronto: Associated University Presses, 1990), 152-153. See also, Miquel Àngel Casanovas Camps, "The British Presence in Minorca during the Eighteenth Century," and Tito Benady, "Trade and Contraband in Gibraltar in the Eighteenth and Nineteenth Centuries" in *Anglo-Saxons in the Mediterranean*, ed. Carmel Vassello and Michela D'Angelo (Msida: Malta University Press, 2007), 52, 72-73.

⁶ T. C. Smout, *Scottish Trade on the Eve of the Union 1660-1707* (Edinburgh and London: Oliver & Boyd, 1963), 28, 97; Eric J. Graham, *A Maritime History of Scotland, 1650-1790* (East Linton: Tuckwell Press, 2002), 30-31; Colin Heywood, "Ideology and the Profit Motive in the Algerine Corso: The Strange Case of the *Isabella* of Kirkcaldy, 1709-1714," in *Anglo-Saxons in the Mediterranean: Commerce, Politics and Ideas (XVII-XX Centuries)*, ed. Carmel Vassallo and Michael D'Angelo (Msida: Malta University Press, 2007), 19-20.

⁷ Following the Union, there were expectations for an increase of Scottish trade to the Mediterranean, but only a handful of troubled voyages actually took place: see Graham, *A Maritime History of Scotland*, 154.

⁸ Ralph Davis, *Aleppo and Devonshire Square: English Traders in the Levant in the Eighteenth Century* (London: Macmillan, 1967), 60-74.

development of British navigation in all these regions. This chapter examines the legal controversies that arose from competing jurisdictional claims to prosecute crimes onboard British ships and to regulate British navigation. In the Mediterranean, as in other seas, ships transmitted the authority of the British Crown and Admiralty overseas, but sailed into waters that fell under the sovereignty and jurisdiction of foreign princes. In the Caribbean, disputes over Spanish efforts to regulate navigation and trade in waters over which Spain claimed sovereignty led to the outbreak of the War of Jenkins' Ear in 1739. The legal status of ships was just as ambiguous in the coastal waters of the Mediterranean as it was along the imperial frontiers of the Atlantic. Jurisdictional contests over the regulation of British navigation illustrated both the expansion of British state authority during the first half of the eighteenth century and the extent to which other powers continued to shape the legal and political environments through which British ships sailed.

I. The Jurisdiction of the High Court of Admiralty

Early modern Admiralty courts exercised an expansive jurisdiction over criminal and civil cases occurring on British ships that carried the extraterritorial authority of the British state into waters around the world. As Richard Zouche noted and other jurists confirmed, the Lord High Admiral enjoyed a global jurisdiction over causes arising at sea, which “hath no bound, but extends to the *Mediterranean*, *African*, and *Indian* Seas, or any other far remote.”⁹ The institutional expansion of Admiralty authority in the later

⁹ Richard Zouche, *The Jurisdiction of the Admiralty of England asserted against Sir Edward Coke's Articuli Admiralitatis, in XXII Chapter of his Jurisdiction of Courts* (London, 1663), 18. Leoline Jenkins echoed this expansive conception of Admiralty jurisdiction when he asserted that the Crown had

seventeenth and early eighteenth centuries was crucial to the expansion of English imperial authority into the Atlantic and Indian Oceans.¹⁰ However, the extent of Admiralty jurisdiction “beyond the seas,” rather than within British waters, has been only partially considered by scholars.¹¹ According to Sir Matthew Hale, probably writing in the early 1670's, the Admiralty held jurisdiction over civil and criminal cases that occurred on the “Vast Ocean” or upon “those parts thereof that are contiguous to or belonging to any Dominions of any other Crown but the Crown of England, as the Mediterranean, Adriatick, Spanish Seas &c.”¹² Hale did not address whether other states should or would acknowledge the jurisdiction of an English court over matters occurring within waters over which they claimed sovereignty.¹³ In the first half of the eighteenth

jurisdiction to protect English subjects against piracy in the “even in the remotest Corners of the World,” Jenkins, “Charge given to an Admiralty session held at the Old Bailey,” c. 1669-1674, in William Wynne, *The Life of Sir Leoline Jenkins, Judge of the High-Court of Admiralty* (London, 1724), 1: xc-xci, quoted in Michael Kempe, “Even in the remotest corner of the world’: globalized piracy and international law, 1500-1900,” *The Journal of Global History* 5, no. 3 (October 2010), 370.

¹⁰ See Philip J. Stern, “British Asia and British Atlantic: Comparison and Connections,” *William and Mary Quarterly*, 3rd ser., 63, no. 4 (October 2006): 708-712.

¹¹ The extent of Admiralty jurisdiction into foreign waters has received relatively little attention as historians have focused on the sustained debates between civil and common lawyers that substantially limited the authority of Admiralty courts within England. For a legal analysis of questions of Admiralty jurisdiction on the high seas and in foreign waters, see Glanville Williams, “Venue and the Ambit of Criminal Law,” *The Law Quarterly Review* 81, no. 321 (January 1965): 285-286.

¹² Sir Matthew Hale, “A Disquisition touching the Jurisdiction of the Common Law and Courts of Admiralty in relation to things done upon or beyond the Sea, and touching Maritime and Merchants Contracts,” in *Hale and Fleetwood on Admiralty Jurisdiction*, ed. M. J. Prichard and D. E. C. Yale (London: Selden Society, 1993), 106-107. On the dating of this text, see Prichard and Yale, “Introduction,” in *ibid.*, xvii-xviii.

¹³ English jurists disagreed on this matter. Charles Molloy asserted that the king of England possessed sole jurisdiction over cases of piracy occurring upon the British Seas, since the Crown possessed “istud regimen dominium exclusive” of those seas, *De Jure Maritimo et Navali*, 2nd ed. (London, 1677), 38. Conversely, Sir Philip Meadows acknowledged that French and Dutch courts also heard cases arising onboard ships in the British Seas and did not acknowledge the sole jurisdiction of the Admiralty over those seas, see Meadows, *Observations Concerning the Dominion and Sovereignty of the Sea*, 28-29. Apparently only a handful of cases involving crimes committed on foreign ships within the “British Seas” appeared before the Admiralty Sessions, most emerging from the period of the Second Anglo-Dutch War in the context of the

century, though, murders and mutinies on board British vessels within the Mediterranean repeatedly raised the question of whether the Admiralty had authority over crimes committed in the territorial waters of foreign states.

The early decades of the eighteenth century marked a notable growth in the legal authority of the British state in the Mediterranean. There appear, however, to have been few seventeenth-century disputes over the jurisdictional status of British ships in Mediterranean ports. While the High Court of Admiralty began proceedings in the case of at least one murder that took place within the harbor of Lisbon, seventeenth-century diplomatic representatives seem to have accepted the fact that ships in foreign ports fell under the jurisdiction of the courts and officers of that state.¹⁴ For example, John Finch protested the searching of an English ship at Livorno by agents of a farmer of duties on tobacco as a discredit to English navigation, but he did not contest the right of Tuscan officials to search English ships. Instead, he argued that since the ship in question did not carry tobacco as a commodity for sale but only for the use of the sailors onboard, it ought to have enjoyed the benefits of the free port and been left undisturbed.¹⁵ Two decades of war and of disputes over the prize cases appear to have made Britain's representatives around the Mediterranean more jealous of Admiralty jurisdiction over cases involving British vessels.

English Crown's efforts to affirm its sovereignty over the British Seas, Prichard and Yale, "Introduction," cc.

¹⁴ Prichard and Yale, "Introduction," ccvi.

¹⁵ "Sir John Finch's Memorial to the Great Duke," Florence, 3 September 1667 and Finch to Arlington, Florence, 6 September 1667, TNA SP 98/8.

As the British state and its counterparts asserted their authority over overseas subjects and navigation in the early eighteenth century, jurisdictional contests over the status of ships in foreign harbors became more common. There were, however, important limits to this process. Jurisdictional disputes between the British Admiralty and Mediterranean states were largely confined to cases of mutiny and murder that occurred within foreign ports and to broader questions as to the legal status of British vessels in foreign ports.¹⁶ Conversely, whereas the attempts of the French Crown to impose the extraterritorial authority of consuls over French navigation produced a steady stream of contentious diplomatic exchanges, it appears that neither British diplomats nor jurists raised objections to foreign courts adjudicating disputes between masters and mariners. Instead, the governor of Livorno, Giuliano Capponi, specifically cited cases brought before Tuscan tribunals by British sailors and masters in order to combat the claims of French consuls to exclusive jurisdiction over matters occurring between French subjects.¹⁷ Yet, serious crimes committed in foreign harbors were highly visible affairs that drew not only the attention of local officials, but also of British diplomats who sought to sustain Admiralty jurisdiction over British navigation. Moreover, the Henrician statutes 27 Henry VIII c. 4 and 28 Henry VIII c. 15, which were designed to create a

¹⁶ Studies of the legal status of ships on the high seas and in port overwhelmingly concentrate upon developments from the second half of the nineteenth century, as in Charles Noble Gregory, "Jurisdiction over Foreign Ships in Territorial Waters," *Michigan Law Review* 2, no.5 (February 1904): 333-357. The most thorough discussion of early-modern English Admiralty jurisdiction comes in Prichard and Yale, "Introduction," passim. For further contextualization of Admiralty law as a form of extraterritorial jurisdiction, see Kelly de Luca, "Beyond the Sea: Extraterritorial Jurisdiction and English Law, c. 1575- c. 1640," 79-96.

¹⁷ Capponi to Rinuccini, Livorno, 15 October 1738, ASF Mediceo del Principato, 1807, #30. John Dick's complaint, also discussed in chapter two, that Livorno's auditors heard cases between ships' masters and their sailors appears to have been exceptional, John Dick to Sir Henry Fox, Livorno, 25 June 1756, TNA SP 98/63, f. 93v-94r.

more effective instrument to combat piracy and to prosecute felonies committed at sea, affirmed the expansive extraterritorial reach of English justice to encompass acts done “upon the seas, or in or upon any other haven, river, or creek.” From 1536, these statutes transferred the High Court of Admiralty's criminal jurisdiction to specially appointed commissions of oyer and terminer, later referred to as the Justices of the Admiralty, who heard cases according to the rules of common law, by which it was easier to obtain a conviction than it was adhering to the procedures of the civil law that regulated the High Court's proceedings.¹⁸ These new courts, referred to as Admiralty Sessions, broadly transformed and expanded the criminal jurisdiction of the Admiralty.¹⁹

The High Court of Admiralty thus claimed jurisdiction over criminal cases that arose within littoral waters over which other state's claimed sovereignty. The Admiralty Court judge Sir Henry Penrice confirmed this interpretation of the court's jurisdiction in 1719. In that year a sailor who was brought before the court for the murder of a shipmate in the harbor of the Ionian island of Zante argued that his crime did not fall within its authority, having been committed in “a Porte that belong'd to the State of Venice” and within the reach of Zante's cannon. Particularly, the sailor had been advised that if he was to be tried in Britain, his case ought to be heard in the court of the High Constable & Earl Marshall, which had extraterritorial jurisdiction over cases involving British subjects that

¹⁸ Prichard and Yale, “Introduction,” cxxxvii.

¹⁹ The Henrician statutes were aimed against “traytors, pirates, thieves, robbers, murtherers, and confederates,” *ibid.* cxlviii-cxlix. The legal difficulties that arose from attempts to apply these statutes to the problems of Atlantic piracy led to creation of new anti-piracy statutes after 1700, most notably 11 and 12 William III c.7, which allowed pirates to be prosecuted without being brought back to England to stand trial. For the development of this legislation within an imperial context, see Robert C. Ritchie, *Captain Kidd and the War against the Pirates* (Cambridge, MA: Harvard University Press, 1986), 141-144, 152-154.

occurred in foreign countries.²⁰ Penrice and the Court rejected this argument and asserted that the case was indeed within the statutes of Henry VIII for the commission of oyer & terminer, since it encompassed acts committed in harbors and havens outside the British Seas.²¹ Besides displaying the sometimes surprising skill with which sailors maneuvered around the law, this opinion affirmed that the Admiralty possessed jurisdiction over matters in distant coastal waters that, around Britain, would fall under the authority of common law, territorial courts.²²

Jurists were circumspect in their discussions of how the jurisdiction of the High Court of Admiralty related to the authority of foreign courts and sovereigns. Following a mutiny on board the ship *Catherine* in the port of Genoa in late 1722, George Henshaw, the consul in that port, warned that the Genoese government intended to try the mutineers and might subsequently claim the right to visit other British ships as well.²³ Meanwhile, the British resident at Genoa, Henry Davenant, denied that the republic had any “right or

²⁰ The Court of the Constable and Marshal was particularly concerned with questions of heraldy and martial law, but it also had jurisdiction over felonies committed in foreign territory. By the eighteenth century the court had long fallen into disuse. See Kelly deLuca, “Beyond the Sea,” 70-74.

²¹ The sailor was subsequently tried before the Admiralty Sessions and sentenced to death, Sir Henry Penrice, 10 November 1719, TNA ADM 1/3669, f. 427v. This interpretation of the Henrician anti-piracy statutes gave the Admiralty a more extensive jurisdiction in foreign waters than that it was generally conceded to have in British ports and harbors. Thomas Molloy wrote, “Though a Port is *Locus publicus uti pars Oceani*, yet it hath been resolved more than once that all Ports, not only in the Town, but the Water is *infra corpus Comitatus*, “ and, consequently, crimes committed there were to be tried in common law courts, *De Jure Maritimo et Navali*, 43, 197. For further discussion of the seventeenth century debates that limited Admiralty authority in British ports through the eighteenth century, see Prichard and Yale, “Introduction,” clxxvi-clxxxv. Common law lawyers, did, however, concede Admiralty jurisdiction over murders committed within ports, *ibid.*, clxxxiv.

²² For pirates and sailors as “lawyers,” see Lauren Benton, “The Legal Spaces of Empire: Piracy and the Origins of Ocean Regionalism,” *Comparative Studies in Society and History* 47, no. 4 (October 2005): 706-713; *eadem.*, *A Search for Sovereignty*, 112-120.

²³ Henshaw contrasted the republic's conduct with regard to this affair with their previous behavior “when one of our Brittish merchants, had apply'd to this Magistrate of the Sea to sequester a Brittish ship here for a debt, the Magistrate, as is usuall, would not doe it without my consent, and then I sent my Vice Consul to bee present,” Henshaw to Lord Carteret, Genoa 22 December 1722, TNA SP 79/14.

pretence to take cognizance of any fact committed on board an British ship.”²⁴ Davenant also insisted that officials had made no efforts to visit British ships in either Livorno or Genoa for the duration of his office. Both he and Henshaw feared that the republic's claim to jurisdiction over the matter would establish a precedence for officials to visit British ships.²⁵ The Judge-Advocate Nathaniel Lloyd, on the other hand, agreed that the case should have been tried solely in Britain if it had occurred on board ship as a “private, & as it were a Family affair.” However, because shots were fired and the captain's life endangered, the mutiny was also a publick outrage “against the Peace and honour of the Port.” Consequently, Lloyd thought that the Genoese government was entitled to proceed against the mutineers for offending the peace of the port, but that they should then be transported back to Britain to be tried for the mutiny they committed.²⁶ The mutineers were sentenced to fifteen years banishment by a Genoese court, before being transported back to Britain.²⁷

As with debates over consular jurisdiction, contests over the jurisdiction of criminal cases exposed conflicting and ambiguous conceptions of the reach and limits of sovereign authority in the early modern world. Even as jurists accepted that British vessels in foreign ports came under the authority of local courts, diplomats and consuls regularly argued for the exclusive jurisdiction of Admiralty courts over cases involving

²⁴ Davenant to Carteret, Genoa, 22 December 1722, TNA SP 79/14.

²⁵ “...que le Ser:ma Republique n'a aucun droit d'envoyer des gens armés a bord des vaisseaux anglois sous quelque pretexte que ce puisse etre, a moins que le Ministre, ou le Consul de la Nation ne le demande, et qu'en tel cas ceux qu'on tfait prendre, doivent etre gardéz uniquement a la desposition de Sa Majesté,” “Copie de la protestation de M. D'avenant présentée au Secretaire d'Etat a Geneva, le 19^e Decembre 1722,” TNA SP 79/14.

²⁶ Nathaniel Lloyd, Cambridge, 1 January 1722, TNA SP 104/98.

²⁷ Henshaw to Carteret, 26 January 1723 and 2 February 1723, TNA SP 79/13.

British vessels. In 1724, when Tuscan authorities opened a criminal investigation of the master of the ship *Betty* for molesting a Portuguese passenger, Brinley Skinner, the British consul at Livorno, responded that since the alleged crime had been committed under the British flag, it could be “no where tryed but in the High Court of Admiralty of Great Britain.”²⁸ Jurisdictional disputes thus emerged not only from the collision of different juridical authorities in cases occurring in foreign ports and waters, but also from the efforts of state officials to establish the exclusive authority of their respective governments over subjects and ships overseas. As a result of these contests, ships became sites where diverse territorial and extraterritorial conceptions of sovereignty collided.

II. *Sovereignty and the Flag*

Although British jurists acknowledged that ships fell under the laws of the rulers whose ports they entered, they did not imagine a distinct line at which Crown authority ended and foreign sovereignty began. The legal and diplomatic status of ships in coastal waters and foreign ports was thus ambiguous. Seventeenth and eighteenth-century references to “floating Castles” generally referred to warships, which were customarily exempted from the jurisdiction of foreign courts.²⁹ Furthermore, from the mid-eighteenth century, British jurists resisted the jurist Martin Hübner's equation of neutral ships and

²⁸ Skinner, Livorno, 27 October 1724, TNA SP 98/26.

²⁹ For instance, in response to an incident in which the captain of an English warship forcibly retrieved deserters from an English merchant vessel within the port of Lisbon, the Crown's advocate-general advised that “An English Man of Wars Commanding Officer, in a Neutral Port, by the general Laws of Nations, has no authority, or coercive Jurisdiction, beyond the Limits of his floting Castle, so long as he remains in Port,” George Paul, Doctors Commeons, 19 March 1741, TNA ADM 7/298, f. 26v.

neutral territory.³⁰ It was only in the nineteenth century that commentators began to refer explicitly to ships as “floating islands” and even this description was a metaphor and legal fiction, not intended to suggest that ships were actually pieces of national territory.³¹ Instead, ships were under the legal authority of the state whose patents they carried and whose subjects owned and crewed them, but they could also move into waters where they would fall under the jurisdiction of foreign states. Yet, precisely because ships sailed under Crown protection and authority, foreign interference with British navigation was potentially controversial. At question was where and whether ships passed from the jurisdiction of the English Admiralty and into that of foreign courts and foreign sovereigns.

As Europe's major powers sought to establish their authority over subjects and their ships, they challenged the maritime sovereignty of Italian states. In 1719, the Venetian Republic decreed that all vessels entering any of Venice's ports should submit to inspection by customs officers to put an end to rampant smuggling. Underlying this action were the efforts of the Austrian Emperor, Charles VI, to develop Austrian commerce in the Adriatic. In 1717, Charles challenged Venetian supremacy in that sea by

³⁰ Martin Hübner, *De la saisie des bâtiments neutres ou du droit qu'ont les nations belligérantes d'arrêter les navires des peuples amis* (La Haye, 1759), vol. I, ch. II, sec. VI, 211-2. Sir William Scott rejected this principal outright in a 1820 decision in which he stated “I know of no such right of protection belonging to the British flag, and that I think such a pretension is unfounded in point of principle, is injurious to the rights of the countries, and is inconsistent with those of our own,” quoted in Henry Wager Halleck, *Halleck's International Law, or, Rules Regulating the Intercourse of States in Peace and War*, 3rd ed. (London: Kegan Paul, Trench, Trübner, 1893), 1: 228.

³¹ The origins of this analogy were closely related to the reform of Britain's court system through the mid-nineteenth century, in which the legal fiction that ships were part of the territory of Great Britain allowed them to be, William Oake Manning, *Commentaries on the Law of Nations* (London: S. Sweet, 1839), 209-211; Francis Taylor Piggott, *Nationality: English Law on the High Seas and beyond the Realm* (London: William Clowes and Sons, 1906), 9-11. See also Daniel Heller-Roazen's summary of the development of the idea of the ship as a floating territory in *The Enemy of All*, 126-131.

extending imperial protection to ships sailing to the empire's ports. Subsequently, he established free ports at Trieste and Fiume, directly attacking Venice's economic positions.³² Within the context of this Austrian threat to Venetian commerce and maritime sovereignty, the republic instituted searches to ensure that goods could not be smuggled into Venice from Austrian ports and to reassert Venetian authority over navigation in the Adriatic. The Venetian edict mandating inspection of ships thus contrasted Venetian conceptions of the Adriatic as a closed sea with Austrian declarations that it was open. However, the British response to this Venetian edict centered less on the freedom of navigation in the Adriatic than it did on the honor of British navigation.

British representatives protested that the mandatory searching of vessels violated the privileges of the nation's navigation and the honor of its flag.³³ According to the British consul at Venice, Neil Brown, this requirement was a violation of the long-standing practice whereby merchant ships were not visited by customs officials, but only by officers of the Magistracy of the Sanità to enforce the ship's quarantine upon its coming from the Levant.³⁴ According to Alexander Cunningham, the British resident at the city, the real motive behind the decree was not to stop smuggling, since Venetian nobles themselves were heavily involved in that abuse, but to “attaque the flags of princes in subjecting them to their decrees, only to establish their Sovraintie in the

³² Giuseppe Stefani, “Carlo VI e il problema adriatico,” *Archivio Veneto* 63 (1958): 148-224. For a summary of Austrian policy towards the Adriatic during the second decade of the eighteenth century, see also Mario Dassovich, *L'impero e il golfo: i territori degli Asburgo sull'Adriatico negli anni 1717-1814* (Udine: Del Bianco, 2002), 18-22 and idem., *Navigazione e commerci nell'Adriatico del XVIII secolo: l'ultimo secolo del Golfo della Serenissima, una ricerca storiografica* (Udine: Del Bianco, 2008), 81-86.

³³ A copy of the republic's decree of 21 January 1719 is contained in TNA SP 99/62, f. 215r-216r.

³⁴ Brown to James Craggs, Venice, 28 January 1719, TNA SP 99/62, f. 213v.

Golf.”³⁵ Since British vessels were generally too large to approach Venice itself, they instead unloaded their cargoes at the outlying inlet of Malamocco two miles from the city, allowing the goods to be inspected as they were subsequently transported to Venice. Underlying Cunningham's objection to the searching of British vessels, there appears to be an implicit question as to the extent of the port of Venice and, consequently, of where British vessels fell under the jurisdiction of that state.

Although this controversy raised questions as to how far Venice's sovereignty still reached into the Adriatic, Britain's representatives never explicitly differentiated this particular issue from their general concern for the privileges of British navigation. Instead, Cunningham later told the Venetian government that he had no objection to the republic searching goods for smuggled items, but he would not permit them to do it aboard ships over which the “Kings flag” flew.³⁶ In a conversation with the mercenary Johann Matthia von der Schulenberg, Cunningham was more explicit and questioned whether the proper way for the republic to maintain its own sovereignty was “to invade that of others.”³⁷ In similar terms, the resident had previously replied to a Venetian

³⁵ Reflecting the degree to which he dismissed Venice's claims to sovereignty over the Adriatick, Cunningham continued, “if it that is grant them, I doe not doubt but Constantins donation will be soon granted to the Pope,” Cunningham to Craggs, Venice, 11 August 1719, TNA SP 99/62, f. 317v.

³⁶ Cunningham to Craggs, Venice, 4 August 1719, TNA SP 99/62, f. 307v. Cunningham presumably was referring to the “red ensign” used by English merchants ships, not the Union Jack, which was reserved for naval vessels. A royal proclamation of 1674 reaffirmed prohibitions on the use of the Union flag by merchant ships and specified that they were instead to fly the “red ensign,” William Gordon Perrin, *British Flags, their Early History, and their Development at Sea; with an Account of the Origin of the Flag as a National Device* (Cambridge: Cambridge University Press, 1922), 130. French sources are just as unclear as to the distinction between the different forms of national flag that were prescribed for navigation as English documents, referring only to “la banniere de france” or “le pavillon françois.” Like their English counterparts, French merchant vessels were forbidden from flying the “pavillon blanc,” which was reserved for the king's ships, though this regulation seems to have been regularly flouted, see René-Josué Valin, *Nouveau commentaire sur l'ordonnance de la marine, du mois d'août 1681* (La Rochelle, 1760), 68-69.

³⁷ Cunningham to Craggs, Venice, 4 August 1719, TNA SP 99/62, f. 308v.

reminder that, “the Senate here is Master,” by affirming that he did not dispute that, “But they were not Masters of the flags of other Soverains.”³⁸

British arguments for the immunity of ships from search rested on a precarious set of arguments drawn from the real or imagined traditions of a port and on assertions of the honor and respect due to the British colors and to the ships that flew them. In his protest against the republic's decree of 1719, Cunningham's successor as resident, Edward Burges, advised the Venetian government that the requirement that foreign vessels submit to inspections by customs officials was “a thing contrary to the Priviledges which his Subjects have always enjoyed here, and in all the Ports of the Mediterranean.”³⁹ Conversely, in defense of their right to search vessels, Venetian officials pointed out that the republic had previously issued orders for the inspection of ships on numerous occasions. The Venetian ambassador to Vienna further asked, “in what part of the world has a Flag ever been seen to give immunity and freedom from the uncontestable duties of the state?”⁴⁰

British claims for the privileges or honor of the flag in the Mediterranean were thus a particularly delicate matter, resting neither on the imagined territorial sovereignty of the Crown over ships nor on juridical precedent. The importance of the flag lay in its representation that the ship flying it was under the authority and protection of the Crown.

³⁸ Cunningham to Craggs, Venice, 31 March 1719, TNA SP 99/62, f. 261r.

³⁹ “...ch'ella non vuole mai sottomettersi ad una Cosa si contraria à gli Privileggi delli quali i Suoi Sudditi anno sempre goduti Qui, ed in tutti li Porti del Mediterraneo, e si destruttiva della libertà del loro Commercio,” Edward Burges to the Doge and Senate, 13 September 1720, TNA SP 100/31; TNA SP 99/62, f. 580r-v.

⁴⁰ “...in qual luogo del mondo si è mai veduto, che una Bandiera presti impunità, e franchiggia dai diritti inconstastabili del P:npato,” Pietro Grimai to the Senate, Cimerin, 19 August 1719, quoted in Stefani, “Carlo Vi e il Problema Adriatico,” 213.

Burges carried on the British case against the Venetian decree, but suspected that the matter was “taken too high here at first.” Burges noted that the British merchants at Venice thought that the controversy over searches was less a matter of trade than one of “the Honour of the British Colours,” but he further reported that they would not have opposed the decree, had Cunningham not “spirited them up, and persuaded 'em that the Honour of the Nation was wounded by it.”⁴¹ Indeed, Cunningham related that during a conversation he had with the Austrian resident at Venice regarding the privileges accorded to flags at the city, he had felt reluctant to engage deeply in “so nice a subject,” because they centered on the privileges of the flag within foreign ports. But he noted that “it was not permitted to every Master of a ship to use the flag when and where he pleased, nor was the flag to [screen] Counterband and running goods, as was done by some here.” Moreover, as Cunningham related, the flags of large British and French vessels that stopped at Malamocco were respected, but smaller ships that went up to Venice were searched.⁴²

The opinions of Cunningham highlight the degree to which apparent rhetorical excess about the honor of the flag exposed a conviction that ships carried sovereigns' authority and protection into foreign waters. As a result, debates about the privileges of British navigation further suggest the sensitive legal and political questions that surrounded ships in foreign harbors. British and Venetian diplomats eventually arrived at a compromise wherein vessels that unloaded at Malamocco would be exempted from

⁴¹ Burges, Venice, 10 November 1719, TNA SP 99/62, f. 384r-v.

⁴² Cunningham to Craggs, Venice, 28 July 1719, TNA SP 99/62, f. 303v.

inspection, but those that proceeded onto Venice proper would be liable for search.⁴³

This seems to have resolved the controversy of the searching of British vessels. The Venetians continued to search ships flying the Austrian flag, probably because the Austrians still lacked the naval force or commercial strength to enforce its claim to the freedom of Adriatic navigation. Nevertheless, the two states eventually reached an accommodation as well.⁴⁴

Arguments that a ship's flag conferred protection on it wherever it was further called into question how the authority of sovereigns over their subjects and ships intersected with the jurisdiction of foreign princes within their own ports. The immunity that Louis XIV claimed for passengers onboard French ships in the face of corsairs' efforts to enforce the *visita* was carried even into foreign ports. After Tuscan officials seized a suspected murderer from a French vessel within the port of Livorno in 1727, French ministers demanded greater respect be shown to the French flag in the future, citing the example of the king of Sardinia, who had recently conceded that the French flag conferred a right of asylum upon the ships flying it.⁴⁵ The French Minister of the Marine, the Comte de Maurepas, issued a memorial that asserted that the French Crown

⁴³ This compromise appears to have been first proposed by the Venetians in the summer of 1720, as seen in the "Memoria presentata à Sua Eccellenza il Signore Craggs Segretario di Stato di Sua Maestà Britannica, da me infrascritta Segretario della Serenissima Repubblica di Venezia," London, 20 July 1720, TNA SP 100/31. This proposal was ultimately accepted by the British government as confirmed in a memorial of Edward Burges to the Venetian government of 6 April 1721, TNA SP 99/62, f. 580r-v.

⁴⁴ Liana de Antonellis Martini, *Portofranco e comunità etnico-religiose nella Trieste settecentesca* (Milan: Giuffrè, 1968), 28-29; Antonio di Vittorio, *Gli Austriaci e il Regno di Napoli, 1707-1734* (Naples: Giannini Editore, 1973), 282-286.

⁴⁵ Memoire de Maurepas, 4 January 1728 and Montemagni to Franchini, Florence, 23 January 1728, both in ASF Mediceo del Principato, 4716. Skinner complained of the Tuscan government's pretence to "this very unlawfull power of forcing sailers from under the respective Colours," Skinner to Newcastle, Livorno, 29 November 1727, BL Add. MS 51504, f. 79v-80r.

claimed “an immunity attached to the Banner of France from time immemorial.”⁴⁶ The minister affirmed that the protection of the flag would not be extended to those who had committed capital crimes or to deserters. In these cases, though, judicial authorities were to turn to the French consul for the arrest of the suspect while still under the flag. This memorial suggests a conception of sovereignty wherein authority was not geographically bounded; the ship was a sovereign space only in as much as the flag it carried conferred the protection of the monarch.

As with controversies over Admiralty jurisdiction regarding crimes committed onboard British vessels, the extension of the sovereign protection of a ruler into a foreign port challenged the sovereignty of that state. Coriolano Montemagni, the secretary of the Grand Duke, was not persuaded that every “piccolo Barchereccio” should be entitled to the same respect owed to men of war purely on the basis of raising the flag of a prince.⁴⁷ Such a privilege would not only be a direct violation of the Grand Duke's jurisdiction, since ships in the port of Livorno sat under the guns of the forts that surrounded it. It also would give the duke's slaves, if they reached ships even anchored at the shore, a more secure claim to asylum than they received in churches.⁴⁸ While the French were unwilling to surrender the principle of the protection of the flag, they would consider following the example of the British at Venice and establish a boundary within which ships would

⁴⁶ “...que tous les bâtiments françois, sans en excepter aucun, sont Exemts de toute Visitte, que c'est Une Immunité attacheé depuis Un tems Immemorial a la Banniere de france, et que l'on a toujours esté tres attentif a Empescher que l'on y donne aucune atteinte,” *Memoire di Maurepas*, 4 January 1728, ASF Mediceo del Principato, 4716.

⁴⁷ Montemagni to Franchini, Florence, 23 January 1728, ASF Mediceo del Principato, 4716.

⁴⁸ Montemagni to Franchini, Florence, 23 January 1728, ASF Mediceo del Principato, 4716.

lower their flags and submit to searches.⁴⁹ Implicit within this proposal was the definition of the extent of Tuscan and French authority over ships at sea. This further example of the uneven development of a Mediterranean regulatory regime failed when word arrived that the Austrians had refused Genoese authorities permission to search their vessels. As the Tuscan ambassador at Paris related, the French would never agree to any proposal that ceded a prerogative claimed by the Austrian emperor.⁵⁰

The idea that the flag symbolized the protection and authority of the state seems to explain Cunningham's complaint that the searching of ships violated the sovereignty of the prince whose flag the vessels flew. British representatives sided with their French counterparts after Tuscan officials used force to remove a suspect from a French vessel in 1727. Brinley Skinner described the conduct of the *sbirri* [law enforcement personnel] as “an unwarrantable violence” that violated “the sanction of those Colours” and merited the French consul's “heavy & just complaints.”⁵¹ Skinner had employed similar terms with regards to the matter of master Copithorne three years earlier, writing to the British consul in Lisbon that he convinced Tuscan officials not to use force to reclaim the Portuguese girl from the *Betty* by demonstrating “the protection the Colours of Crown'd heads given in this port to Fugitives in Crimes of the Blackest Nature.”⁵² Conversely, when he first learned of the accusations directed against Copithorne, Skinner had warned the master, “your Behaviour in this Affair seeming to me unjustifiable & Inconsistent

⁴⁹ Franchini to Montemagni, Paris, 16 and 23 February 1728, ASF Mediceo del Principato, 4716.

⁵⁰ Franchini to Montemagni, Paris, 12 April 1728, ASF Mediceo del Principato, 4716.

⁵¹ Skinner to Newcastle, Livorno, 29 November 1727, BL Add. MS 51504, f. 79v-80r.

⁵² Skinner to Thomas Burnett, Livorno, 25 September 1724, BL Add. MS 41504, f. 8v.

with the Priviledges of the English Colours It may not be in my Power to Protect either your Person or ship from the Princes just demand.”⁵³ The anxiety displayed in Skinner's letter to Copithorne does not conflict with his general concern for the privileges of the British flag and navigation, but rather reflects the delicate legal and political situation that resulted from the intersection of British and Tuscan claims to authority over vessels in Livorno's harbor.

Questions as to the privileges that ships enjoyed in particular ports complicated the general view among jurists that vessels in foreign harbors fell under the laws and authority of those states. In 1734, the British, French and Imperial consuls at Livorno attested that the ships of their respective nations could not be visited by Tuscan officials for any reason and that no person could be arrested while under the protection of the flag.⁵⁴ Thus, when a Genoese murdered a British sailor in 1737 and then took refuge on a French vessel, the British resident at Florence, Sir Charles Fane, demurred at the request of Marchese Carlo Rinuccini, the Tuscan Secretary of War, that he ask the French consul to turn over the murderer to Tuscan authorities. Although he did not think the murderer should be protected, he hesitated to undertake a course that might lessen “any of the privileges which the colours of Merchant ships were thought entitled to in that port.”⁵⁵ In a parallel dispute of the same period, both the French and British ambassadors in Naples

⁵³ Skinner to Copithorne, Livorno, 8 September 1724, TNA SP 98/26.

⁵⁴ Memorials attesting to the privileges of the English consul, and his counterparts, in the port of Livorno were signed on 30 March 1734 by the English and Austrian consuls and on 23 March by the French consul. They were then used by the English minister, the earl of Essex, to Savoy to defend the contested immunity of the English consul's house in Nice. Essex's letter is dated 15 April 1733, AST Contado di Nizza, Consoli Stranieri, Addizioni, Mazzo 1, #2.

⁵⁵ Fane to Newcastle, Florence, 25 December 1736, TNA SP 98/36.

protested when customs officers began to search their nation's ships in that port in 1737. According to Edward Allen's report on the matter, the Neapolitans invoked the treaty of Madrid of 1667, which continued to regulate the treatment of English merchants in that former Spanish possession, to justify these searches. Conversely, Allen denied that the article providing for inspection of ships had ever been put in execution, maintaining that all attempts to enforce it had failed, such that the British nation was "in possession of this Priviledge and Immunity [from search] from time immemorial."⁵⁶

Appeals to the privileges of British ships and merchants occupied an ambiguous place within the evolution of the British presence in the Mediterranean. The claims of consuls and diplomats for the freedom of British vessels from search within foreign ports derived from their interpretations of custom and established practice, not from the force of treaties or the law of nations. Indeed, as illustrated by Nathaniel Lloyd's opinion in the matter of the attempted mutiny aboard the British vessel in Genoa's harbor, jurists appear to have been more observant of the jurisdictional authority of foreign states than were diplomatic representatives. Yet, at a time when maritime legal regimes were uncertain, ambiguity surrounding custom provided a means by which Europe's major powers could increase and extend the navigational privileges accorded their subjects' vessels. British and French diplomats and ministers put forward an understanding of the relationship between ships and sovereign authority that contrasted markedly with that of smaller states. Italian ministers understood that they would be unable to regulate commerce in their own ports if maritime powers could free ships from the jurisdiction of local courts

⁵⁶ Allen to Newcastle, Naples, 30 July 1737, TNA SP 93/9, f. 153v.

and officers. Contests over the legal status of ships in foreign ports thus became opportunities for states to attempt to extend and to defend their sovereignty at sea.

III. *The National Duty Acts*

Ships were sites where the extraterritorial authority of the Crown over its subjects and their vessels collided with the jurisdiction that foreign states claimed over ports and harbors. In ports where English factories were firmly under the jurisdiction of foreign sovereigns, ships also transmitted the legal authority of the British state into foreign dominions. During the seventeenth century, consuls frequently encountered difficulties when they sought to establish and to levy informal duties on goods freighted on British vessels in order to pay factory expenses. In the first half of the eighteenth century, Parliament enacted legislation to enforce these customary duties collected at Lisbon, Cadiz and Livorno.⁵⁷ The national duties enacted by Parliamentary statute were of minor commercial importance, raising relatively small sums. Nevertheless, through the National Duty Acts, the British government extended formal and legislative recognition to the British factories at Lisbon and Livorno for the first time.⁵⁸ Moreover, these Acts raised important questions of the reach of British state authority over navigation in foreign ports. In Spain, Irish merchants refused to pay the duty and appealed to the Spanish

⁵⁷ A memorial from the British factory at Lisbon from 1715 included a request for parliamentary legislation to mandate payment of the national duty, as foreign merchants refused to pay it, putting British merchants at a disadvantage, TNA SP 100/89. An Act of Parliament mandating and regulating the payment of the duty on goods carried into Lisbon by English ships was passed in 1721, L. M. E. Shaw, *The Anglo-Portuguese Alliance and the English Merchants in Portugal, 1654-1810* (Aldershot: Ashgate, 1998), 66-68. A similar act for the collection of the national duty at Cadiz was passed in 1736, Jean O. McLachlan, *Trade and Peace with Old Spain, 1667-1750* (Cambridge: Cambridge University Press, 1940), 214, n. 121.

⁵⁸ Shaw, *The Anglo-Portuguese Alliance*, 68.

government for relief from it and argued that as naturalized Spanish subjects they could not be obligated to pay a duty by an act of Parliament.⁵⁹ Defense of these duties meanwhile invoked extraterritorial conceptions of the state's legal authority that paralleled those offered by Maurepas in his memorial on the protection accorded ships by the French flag.

At Livorno, Parliamentary and Crown authority over British navigation provided an avenue through which the state could regulate a British factory over which its extraterritorial authority was otherwise limited. Impositions “for Publick and charitable Uses” had been levied intermittently on British goods brought into Livorno in the seventeenth century and were again collected by members of the factory in 1704 to pay for the pamphlets that defended their conduct in the Plowman affair.⁶⁰ The British community at Livorno subsequently retained this duty in order to establish a salary for the chaplain who was finally permitted to live among them in 1707 and to pay for the living expenses of sailors who found themselves at Livorno without employment.⁶¹ Local officials appear to have had no objection to its collection so long as it appeared to be a voluntary collection. However, they vehemently opposed a convention signed by the members of the factory to refrain from trading with Filippo Guglielmo Huigens after that Flemish merchant and naturalized subject of the Grand Duke refused payment of the duty

⁵⁹ The Spanish government upheld the position of the Irish merchants but the dispute apparently passed with the introduction of a new English consul, McLachlan, *Trade and Peace with Old Spain, 1667-1750*, 140-141.

⁶⁰ See above, chapter two.

⁶¹ John Finch to Arlington, Florence, 18/28 June 1667, TNA SP 98/8, f. 169v; Skinner to Newcastle, Livorno, 14 September 1725, BL Add. MS 41504, f. 17v-18v; Skinner to Colman, Livorno, 15 May 1726, BL Add. MS 41054, f. 37v-38v. Tuscan officials, on the other hand, accused Skinner and other prominent members of the factory of abusing the funds raised by the national duty to pay for their own diversions and amusements, as in Montemagni to Pucci, Florence, 24 May 1726, ASF Mediceo del Principato, 4227.

in 1725. Tuscan opposition to the duty focused on the perception that it violated the free port of Livorno, but sensitivity to a law that appeared to compromise Tuscan sovereignty inflected the Italian reaction.⁶² Thus, when Rinuccini instructed the governor of Livorno, Alessandro del Nero, in May 1726 to attempt to convince Skinner and the rest of the English factory at Livorno to drop their convention against Huygens, he pointed out that the Tuscan government did not object to the British making regulations for their own navigation, but could not permit them to make laws on Tuscan soil; the British could thus maintain the duty so long as it remained voluntary, the duke not forbidding the British “any Law on their Ships, but not being able to tolerate that they establish any in the territory of the High Royal Highness.”⁶³ Montemagni instructed the Tuscan resident in London, Vincenzo Pucci, in nearly identical terms that while the grand duke did not prescribe the British from making what regulations they pleased on their navigation or within their nation, he could not to allow them to make or enforce laws in his own country.⁶⁴

In order to sustain the national duty at Livorno, the British transformed the tax collected by the factory there into a legal obligation falling on all goods freighted on British ships for that port. The British government ordered Brinley Skinner and the

⁶² Montemagni to Pucci, Florence, 17 May 1726, ASF Mediceo del Principato, 4227.

⁶³ “...non prescrivendosi ai Signori Inglesi alcuna Legge sù le loro Navi, mà non potendosi già tollerare, che venghino loro a farne nel Territorio di S. A. Reale,” [Rinuccini] to del Nero, Florence, 11 May 1726, ASF Mediceo del Principato, 1810, f. 1331r-v. A decade later, when the bill for the national duty was put before Parliament again, Rinuccini again noted that it was not in the power of his government “to prevent parliament's making what law they pleas'd,” but hoped that they would not proceed in a direction that threatened Livorno's trade, Fane to Newcastle, Pisa, 13 May 1737, TNA SP 98/40, 78r.

⁶⁴ “...non prescrivendosi a Signori Inglesi alcuna Legge sulle loro Nave e nelle loro Nazione mà non potendosi già tollerare, che venghino Loro à farne nel Territorio stesso di S. A. R.,” Montemagni to Pucci, Florence, 17 May 1726, ASF Mediceo del Principato, 4227.

British nation at Livorno to suspend the convention because the factory lacked the authority to pass legislation and the convention consequently lacked any legal basis. Shortly afterward, however, merchants trading to Italy proposed a Parliamentary bill to enforce the collection of a duty on all goods destined for Livorno embarked on English ships.⁶⁵ Juridical opinion further confirmed the right of Parliament to legislate for foreigners on board British ships. The advocate Charles Pinfold argued that the proposed act contradicted neither “the Laws of Nations” nor any treaty between Britain and Tuscany and that the proposed act was “in the Power of the King of England and his Parliament, to lay and enforce the Payment of such Duties, & is such an Act of Sovereignty, as may be safely exercised towards Foreigners, as well as his own Subjects.” According to Pinfold, the duty posed no hardship to those who paid it, since they freighted British ships out of choice and thus enjoyed the privileges of an English subject; in this sense, the duty was no different than the tolls princes charged passing ships in order to maintain lighthouses or defenses against pirates. Pinfold concluded by noting that it was “too much to say that the Crown and Parliament of Great Britain, have not Power, over their own Shipping, to lay Taxes on them, or the Goods they carry, when it is not in contradiction to the Laws of Nations, or any particular Treaty.”⁶⁶ Pinfold's fellow lawyer Exton Sayer agreed and similarly asserted that the king of Great Britain “has an undoubted Jurisdiction over *the Goods & Ships of his subjects*, as well as over their persons” and was thus free, with the consent of Parliament, to lay what conditions or

⁶⁵ See the opinion of the attorney and solicitor generals, Philip Yorke and Charles Talbot to the Privy Council, 18 July 1726 and an unsigned, undated memorandum on the legality of the duty, which observed that “there is no Law to make obligatory” payment of the duty, both in TNA PC 1/4/25. See also Townshend to [Colman], Whitehall, 16 August 1726, TNA SP 98/28.

⁶⁶ Charles Pinfold, Doctors Commons, 31 January 1727, TNA SP 35/76, f. 194r-195r.

restrictions he pleased on their trade to other countries. According to Sayer, the national duty was merely “an exercise of the Natural right of Every Prince” and it was irrelevant that the duty was collected within the dominions of the Grand Duke of Tuscany since the “*obligation to such payment arises within the Dominions*” of the British king.⁶⁷ Both Pinfold and Sayer rejected Tuscan arguments that the duty would violate Livorno's status as a free port, noting that merchants were not obligated to freight British vessels and pointing out that it was the customs policy of the Grand Duke that established the port's freedom.⁶⁸

Although legal opinions affirmed Parliament's right to enforce the national duty at Livorno, political considerations initially doomed the legislation. Despite widespread support in the House of Commons for a bill formalizing and regulating the collection of the national duty, the legislation died in the House of Lords, where the Duke of Newcastle and other politicians opposed it. For Pinfold and Sayer, King and Parliament possessed an unbounded authority over the “Goods & Ships” of subjects. Yet, both ministerial desire to maintain positive relations with Tuscany and the threat that the Grand Duke might rescind his tacit permission for an English chaplain to reside at Livorno proved to be of more weight than the confirmation of British extraterritorial sovereignty.⁶⁹ Ten years later, however, another bill for the collection of the national duty at Livorno was put before Parliament. As before the bill easily passed the House of Commons, but on this occasion it was also approved in the House of Lords by a narrow

⁶⁷ Exton Sayer, Doctors Commons, 4 February 1727, TNA SP 35/76, f. 196r-197r.

⁶⁸ Ibid., f. 196v and Pinfold, Doctors Commons 31 January 1727, TNA SP 35/76, f. 194v.

⁶⁹ Pucci to Montemagni, London, 10 March 1727, 12 May 1727, and 19 May 1727, ASF Mediceo del Principato, 4227.

majority. Pucci attributed the passage of the bill to the failure of the Duke of Newcastle to oppose it, as he had previously done with the bill of 1727.⁷⁰ Since the new bill did not specifically call for the sums raised to be used to pay for English factory's chaplain, ministers may have thought it less likely to raise Tuscan ire than its predecessor. The changing political context that surrounded British relations with Tuscany probably also contributed to Newcastle's refusal to oppose this second bill. In 1727, the political future of Tuscany remained uncertain. It seems probable that British ministers had no desire to aggravate the Tuscan government at a time when settling the succession of Tuscany had become important to establishing the balance of power within Europe. Philip V of Spain and Charles VI of Austria had agreed that the grand duchy should pass to Philip's son Don Carlos upon the death of the elderly and childless Gian Gastone of Tuscany, but the precise terms of the succession remained undecided until the Treaties of Seville in 1729 and of Vienna in 1731. Tuscan ministers, meanwhile, opposed the efforts of Europe's major powers to arrange the succession without Tuscan approval and further objected to subsequent decisions to establish foreign garrisons in Tuscan cities to secure that succession.⁷¹ By 1737, the succession of the grand duchy of Tuscany had been settled and Tuscan ministers were in no position to take a firm stance against the British legislation.⁷²

⁷⁰ Pucci to Montemagni, London, 13 May 1737, ASF Mediceo del Principato, 4231.

⁷¹ Furio Diaz, *Il Granducato di Toscana: I Medici* (Turin: Unione Tipografico-Editrice Torinese, 1976), 516-523; Franco Angiolini, "Il lungo seicento (1609-1737): declino o stabilità?" in *Storia della civiltà toscana*, vol. 2, *Principato mediceo*, ed. Elena Fasano Guarini (Florence: Le Monnier, 1998-2006), 56-59. On British participation in the diplomatic negotiations surrounding the succession to the grand duchy of Tuscany, see Simms, *Three Victories and a Defeat: The Rise and Fall of the First British Empire, 1714-1783* (London: Allen Lane, 2007), 212-219.

⁷² As a result of the War of the Polish Succession, succession to the duchy settled on Francesco Stefano, the duke of Lorraine, and husband of Maria Theresa, in 1736. For a summary of the events leading to this change in succession, see Diaz, *Il Granducato di Toscana*, 523.

Nevertheless, both in 1727 and again in 1737, opposition to the bills for the national duty reflected the same ministerial caution that in other occasions led British ministers to order consuls and diplomats to refrain from exercising jurisdictional authority over their nationals. Pucci reported that Lord Carteret had argued that no matter how reasonable the cause, the British ought not resort to “Acts of Parliament, unrecognized in Foreign Countries, without the favor and permission of the Prince.”⁷³ The repeated opposition of Carteret and other members of the House of Lords to the bills for the enactment of a national duty at Livorno was indicative of an official mentality preoccupied with maintaining positive relations with other European states in order to promote the balance of power among them.⁷⁴ The initial defeat of the bill for the national duty at Livorno and the strong opposition to it by the politicians most closely involved in British foreign policy revealed the political pressures that restrained British claims of extraterritorial sovereignty. On the other hand, the National Duty Acts show how parliamentary regulation of navigation served to transport British law even into foreign ports. The opinions authored by Exton Sayer and Charles Pinfold not only affirmed Crown authority over persons and goods onboard British vessels, but also asserted that that sovereignty was in no ways altered when those ships sailed into foreign ports.

IV. *The Case of the Dove*

⁷³ “...che disse che eziando che la Cosa fusse potuta essere in se stessa ragionevole, non dovevasi mai venire ad atti di Parlamento non conosciuti ne' Paesi Stranierj, senza il gusto, e la Concorenza del Principe,” Pucci to Tornaquinci, London, 13 May 1737, ASF Mediceo del Principato, 4231. Pucci's letters appear to be the only source for the debates over the bills.

⁷⁴ On this point, see Simms, *Three Victories and a Defeat*, passim.

While diplomats claimed expansive privileges for British navigation, the extension of the authority of the Admiralty over felonies committed on board British ships beyond the high seas and into littoral waters called into question the jurisdiction other states exercised over their territorial waters. Following the murder of the master of the *Dove* in 1736 by his crew in the port of Livorno, both British and Tuscan officials claimed jurisdiction over the crime, illustrating how forms of extraterritorial and territorial sovereignty collided in the Mediterranean. According to Sir Charles Fane, three Irish deserters from a Spanish warship conspired with the crew of the *Dove* to murder the master and then sell the ship at Nantes or Brest. On the night of September 19, 1736, the deserters snuck onto the British ship and joined the crew in murdering the master, Benjamin Hawes. The mariners then attempted to escape on board the ship, but they were apprehended about two miles outside the port by several longboats manned from other British merchantmen. The *Dove's* crew was carried back to port and confined on board several British vessels.⁷⁵ The negotiations that followed the murder of Hawes and the recapture of the *Dove* suggest how contested lines of sovereignty shaped the eighteenth-century Mediterranean.

The case of the *Dove* set in opposition the respective jurisdictional, and thus sovereign, authorities of the Tuscan and British states.⁷⁶ Following the murder of Hawes

⁷⁵ Fane to Newcastle, Florence, 22 September 1736, TNA SP 98/36. Tuscan reports do not specifically identify the Irish deserters as the instigators of the crime, Giuliano Capponi to Carlo Rinuccini, Livorno, 19 September 1736, ASF Mediceo del Principato, 2262.

⁷⁶ When a sailor who committed a murder aboard a French vessel in the port of Genoa escaped to a British warship in 1733, the Genoese representative in London complained that the murderer was not immediately turned over to Conservatori del Mare since, "C'est un principe incontestable que le Souverain est le Juge unique de tous les Crimes qui se commettent dans le Païs de sa Souveraineté et de sa Jurisdiction, et on ne sauroit lui disputer ce Droit sans vouloir lui ôter en même tems la partie la plus necessaire et essentielle de la Souveraineté," Giovanni Battista Gastaldi, London, 28 August 1733, TNA SP 100/32.

and apprehension of his murderers, Giuliano Capponi moved to assume jurisdiction over the crime. However, the vice consul for the English nation in Livorno, Pier Francesco Blasini, asserted that since the murder had occurred under the British flag, cognizance of the crime rested with that nation alone.⁷⁷ Blasini not only refused to allow Tuscan officials to board British ships to investigate the crime but also denied them permission to examine Hawes' body after it was taken ashore to be buried at the British cemetery in Livorno, even though the corpse was then on the land of the grand duke and not under the British flag.⁷⁸ Charles Fane supported Blasini and opposed the request of the Marchese Rinuccini that the British accept the jurisdiction of the Grand Duke over a crime “committed in his dominions.” He prefaced his response by noting the many reasons that would lead him to object to Tuscan officials exercising jurisdiction on a British vessel before remarking that he thought the claim to be particularly weak in the case of the *Dove*, since the murderers had been apprehended “as pyrates on the high seas, even out of the reach of the Great Duke's cannon.”⁷⁹ Faced with British resistance, Rinuccini ordered Capponi to proceed in the case, taking the depositions of those persons who were available and to arrest the suspects if they should come onto land.⁸⁰ Capponi raised

⁷⁷ Capponi to Rinuccini, Livorno, 19 September 1736, ASF Mediceo del Principato, 2262. The newly appointed consul for Livorno, Barrington Goldsworthy, only arrived in the city at the end of the year and none of his surviving dispatches contain information regarding the case of the *Dove*.

⁷⁸ Capponi to Rinuccini, Livorno, 21 September 1736, ASF Mediceo del Principato, 2262

⁷⁹ Fane to Newcastle, Florence, 22 September 1736, TNA SP 98/36. See also Rinuccini to Capponi, 20 September 1736, ASF Mediceo del Principato, 2262. Notably, Fane and Rinuccini emphasized different points in their respective accounts of their conversation regarding the *Dove*. Fane reported that he objected to any Tuscan jurisdiction over British ships, but Rinuccini instead accented the fact that Fane portrayed the case of the *Dove* as unique as it had been retaken at sea. Rinuccini wrote that Fane had argued, “che il caso, in cui siamo, è affatto diverso da tutti gli altri, nei quali codesto Tribunale ha proceduto colla consegna anche dei Delinquenti stranieri nelle sue forze.”

⁸⁰ Rinuccini to Capponi, 20 September 1736, ASF Mediceo del Principato, 2262.

further protests from both Blasini and Fane when he had the gate of the British cemetery in Livorno broken open so that Hawes's body could be examined.⁸¹

For the Italians, cognizance of the case was essential to maintaining the grand duke's authority in his own domains; Rinuccini specifically ordered Capponi to proceed against Hawes's murderers in order to preserve the equal jurisdiction of the governor's tribunal over all nations at Livorno.⁸² Following the exhumation of Hawes's body, Fane acknowledged that the Tuscan government claimed jurisdiction over crimes “committed within Cannon Shot of Leghorn, on board of Merchants Ships,” but asserted that this “pretension” had always been contested.⁸³ Although he highlighted the uncertain legal regime that existed in Livorno, the “cannon shot” did not, in fact, straightforwardly define the dominion over which the grand duke claimed to exercise jurisdiction. Instead, Capponi's defense of his authority over the case of the *Dove* reflects the ambiguity of what constituted “territorial waters.” According to the governor, the fact that Hawes's murder had taken place within the reach of Livorno's cannon confirmed the grand duke's jurisdiction, since the crime had taken place “nei Mari del Dominio” of the duke.⁸⁴ As a precedent, Capponi cited a case from the previous summer, when the government of Naples had requested the extradition of a sailor who had committed a murder on board a

⁸¹ Capponi to Rinuccini and the letter of Pier Francesco Blasini to Capponi, both of 24 September 1736, ASF Mediceo del Principato, 2262; Fane to Newcastle, Florence, 25 September 1736, TNA SP 98/36.

⁸² “Si crede dunque, che per cercare di conservare il Diritto, e l'uguaglianza del contegno di codesto Tribunale con tutte le Nazioni, debba V.S. Illustrissima far sapere nuovamente a codesto Vice Console Blasini, che si contenti senza maggiore indugio di disporre quanto si conviene, perche codesti suoi Ministri possano andare senza alcuno ostacolo sulla Nave Inglese a fare la recognizioni, et esami convenienti,” Rinuccini to Capponi, Florence, 20 September 1736, ASF Mediceo del Principato, 4216.

⁸³ Fane to Newcastle, Florence, 25 September 1736, TNA SP 98/36.

⁸⁴ Capponi to Rinuccini, Livorno, 21 September 1736, ASF Mediceo del Principato 2262.

Neapolitan tartan within Livorno's harbor. In response, Capponi had asserted that jurisdiction over a crime committed at sea did not depend upon the flag a ship flew, but fell to the prince “del Territorio adiacente” or to the ruler into whose port the ship first sailed after the commission of the crime.⁸⁵ The fact that the crime had been committed in the port of Livorno put it squarely within the jurisdiction of the grand duke, but the theoretical limit of the grand duke's sovereign jurisdiction in this matter extended beyond the Tuscan harbor.

Capponi's arguments for jurisdiction over Hawes's murder revealed both the pervasive uncertainty that surrounded questions of maritime territoriality and the particular legal traditions that marked Italian views regarding oceanic sovereignty. The dukes of Tuscany did not claim dominion over a clearly defined tract of sea, but rather exercised jurisdiction over their coastal waters. Although the enforcement of quarantine regulations, the defense of the neutrality of Livorno, and the prosecution of crimes committed within that port all established the authority of the duke over coastal waters, they did so within different limits.⁸⁶ Thus, the Tuscan jurist Lorenzo Maria Casaregi argued in 1740 that the “cannon shot” established the extent of the protection of a neutral prince to those waters immediately surrounding ports or fortified sites, while also arguing that princes held jurisdiction over all crimes committed within a distance of a hundred

⁸⁵ Capponi to Rinuccini, Livorno, 22 June 1736, ASF Mediceo del Principato, 2262. Capponi cited Vincentius de Franchis's opinion from *Decisiones sacri regii consilii neapolitani* (Venice, 1616) dec. 142, n. 6, that those who committed crimes at sea “debent puniri per eum, qui habet iurisdictione in Territorio adiaceti, & propinquiore, tanquam quod delictum fit in eius Territorio commissum.”

⁸⁶ On this point, see Andrea Addobbati, “Acque Territoriali: Modelli Dottrinari e Mediazioni Diplomatiche tra Medioevo ed Età Moderna,” in *Frontiere di terra, frontiere di mare: La Toscana moderna nello spazio mediterraneo*, ed. Elena Fasano Guarini and Paola Volpini (Milan: FrancoAngeli, 2008), 191-192.

miles of their shores.⁸⁷ Both Casaregi's opinion and Capponi's arguments for jurisdiction over the Neapolitan ship, and over the *Dove*, reflect the juridical tradition of the medieval jurist Bartolus, who asserted that princes possessed exclusive jurisdiction over waters adjacent to their domains up to a distance of one hundred miles.⁸⁸ Casaregi further asserted that these expansive coastal waters constituted part of the territory of the prince whose state was adjacent to them.⁸⁹ Capponi did not explicitly claim this expansive jurisdiction in his arguments or define how far the waters of the "Territorio adiacente" extended. However if his own appeal to the "cannon shot" suggests a more limited view of Tuscany's territorial waters, he never straightforwardly confined Tuscan jurisdiction to

⁸⁷ Casaregi broadly asserted the jurisdiction of a prince over coastal waters: "Eandem prorsus Jurisdictionem, qua Princeps in Terrestri suo Territorio potitur, etiam habet in Mari edim suo Terrestri Territorio adjacente; Name totum illud Mare, quo suo Territorio usque ad centum milliaria," *Discursus legales de commercio* (Venice, 1740), 2: 40, dis. 136. Conversely, with regards to the neutrality of territorial waters, "In hac quaestione principaliter ita distinguendum est: aut naves istae reperiuntur in mari Principis communis Amici intra centum milliaria, extra tamen illius portus, & praesidia, vel arces militares, & loca, in tali distantia, ut illuc tormenta mutalia, seu bellica adigi non valeant, & in isto casu praedictae naves hostile navigantes in dicto mari communis amici Principis molestari, & depraedari de Jure possunt ab aliis navibus hostilibus," *ibid.*, 2: 171. Reflecting the broad acceptance of this principle among Italian states, the President of the Senate of Nice affirmed this claim to jurisdiction over cases occurring within a hundred miles of the coast in opposition to the jurisdictional claims of French consul at that port, see "Riflessioni del Conte Mellarderde Presidente Capo del Senato di Nizza sopra la Memoria della Corte di Francia concernenti i Privilegi, e la Girusidzione che la medesima desidera vengano accordati Console stabilito in Nizza," AST Condato di Nizza, Consoli Stranieri, mazzo 2.

⁸⁸ For discussion of Bartolus's arguments regarding oceanic sovereignty and their importance for the development of ideas of maritime territoriality, see Percy Thomas Fenn, "Origins of the Theory of Territorial Waters," *The American Journal of International Law* 20, no. 3 (July 1926), pp. 475-478; Addobbati, "Acque territoriali," 179-180; Bottin, "Frontières et limites maritimes au xvi^e siècle," 30-32. See also Thomas Wemyss Fulton, *Sovereignty of the Seas* (Edinburgh: W. Blackwood and Sons, 1911), 558-559; Wyndham Walker, "Territorial Waters: The Cannon Shot Rule," *British Yearbook of International Law* 22 (1945): 224, 228.

⁸⁹ According to Casaregi, coastal waters up to a hundred miles from shore, "non minus reputatur suum proprium Territorium; quam tota Terra, in qua ipse regit, & dominatur," *Discursus legales de commercio*, 2: 40-41. The grand duke's maritime sovereignty was asserted not only through his jurisdiction over criminal matters, but also in his right to levy taxes on ships passing through these waters. Although this expansive sovereign claim seems to have lost its practical force by the eighteenth century, the grand dukes had exercised it in the previous century when they instituted and defended a tax on ships passing through a portion of their coastal waters, Franco Angiolini, "Sovranità sul mare ed acque territoriali. Una contesa tra granducato di Toscana, repubblica di Lucca e monarchia spagnola," in *Frontiere di terra, frontiere di mare*, 173-198.

that distance either.⁹⁰ Although the extent of the jurisdictional sovereignty of princes over waters adjacent to their lands was thus uncertain, it nevertheless clearly overlapped and challenged the authority of the Admiralty over English navigation.

British officials responded to Tuscan claims of jurisdiction over the case of the *Dove* by arguing that the apprehension of Hawes's murderers on the high seas put their prosecution in the hands of the Admiralty. However, like their Tuscan counterparts, they did not accept that the location of Hawes's murder or the place where his murderers were intercepted established the limits of Admiralty authority. Instead, Fane and Blasini followed in the example of both their predecessors when they broadly contended that only the Admiralty ought to have cognizance of acts committed on board British ships.

As Capponi and Fane refused to concede that Livorno's harbor defined the limit of either Admiralty or grand ducal authority, they highlighted the degree to which claims to jurisdiction established rulers' sovereignty in the early-modern world.⁹¹ Tuscany's territorial waters were defined by the expanse of sea over which the grand dukes exercised jurisdiction; conversely, Admiralty jurisdiction over crimes committed upon or beyond the high seas extended the authority of the British Crown far beyond its territorial dominions.⁹² Sir Henry Penrice's opinion as to how the British government should proceed in the matter of the *Dove* illustrated the uncertain overlap of these different

⁹⁰ With regards to the murder committed on board the Neapolitan ship in June 1736, Capponi warned that if Naples was allowed to claim jurisdiction over the crime, other nations would demand the same prerogative over crimes committed “sopra tutte le Navi, ed altri Bastimenti, tanto esistenti alla Spiaggia, che dentro il Molo, e dentro l'istessa darsena,” Capponi to Rinuccini, Livorno, 22 June 1736, ASF Mediceo del Principato, 2262. Capponi appears then to admit that, for all practical purposes, the dukes of Tuscany no longer exercised as extensive a maritime sovereignty as they had claimed in the past.

⁹¹ Peter Sahlins, *Boundaries: the Making of France and Spain in the Pyrenees* (Berkeley: University of California Press, 1989), 7.

⁹² Benton, *A Search for Sovereignty*, 135-137.

avenues of sovereign authority. Penrice first acknowledged that although murder and piracy were crimes of universal jurisdiction, when they were committed within the harbor of a particular sovereign that ruler had proper authority to punish the offenders. Yet, if pirates escaped the port where they committed their offences, all princes and states possessed a “Competent Jurisdiction over them, for the good of mankind, & the benefit of all Princes & states who have Ships & Subjects at Sea,” since pirates were “Enemies of mankind in general.”⁹³ The judge advocate of the Admiralty, George Paul was similarly asked whether the mutiny on board the *Dove* was “to be looked upon as committed on the high seas,” and whether, according to the Law of Nations, the guilty sailors ought to be tried in Britain. Paul argued that because the ship was apprehended “on the high and open Seas, out of the reach of the Great Dukes Cannon, by his Majestys Subjects,” the mutineers ought to be tried in Britain.⁹⁴ Although the jurisdiction of the Admiralty was not coterminous with the “high seas,” locating a crime outside littoral waters denied other courts a competing claim to cognizance over it.⁹⁵ It is thus telling that the indictment that was ultimately issued against the crew of the *Dove* for murder and piracy recounted that they committed their crimes, “upon the high Sea within the Jurisdiction of the Admiralty of England about half a League distant from Leghorn in Italy in parts beyond the Seas.”⁹⁶

⁹³ Sir Henry Penrice, 25 October 1736, TNA ADM 1/3673, f. 469r-v. On the full legal and political significance of this understanding of sovereign jurisdiction over cases of piracy, see Heller-Roazen, *The Enemy of All*, passim.

⁹⁴ Paul wrote that it was customary for foreign princes to deliver up prisoners, see Paul to the Queen, Doctors Commons, 12 October 1736, TNA SP 98/84, f. 327r-329r.

⁹⁵ On the enduring ambiguity of what constituted the “high seas” for the purposes of Admiralty jurisdiction, see Glanville Williams, “Venue and the Ambit of Criminal Law,” 285-286, esp. n. 35.

⁹⁶ TNA HCA 1/19, f. 45r.

Two of the sailors onboard the *Dove* were eventually found guilty for Hawes's murder and they and another found guilty of piracy were hung in March 1737.⁹⁷

The case of the *Dove* illustrated how the Admiralty's jurisdiction over piracy and crimes committed at sea carried the sovereign authority of the British state into the Mediterranean, just as it did into more distant oceanic bodies. In the process, assertions of Admiralty jurisdiction over the case of the *Dove* appeared to undermine the tenuous, and thus jealously guarded, sovereignty of the Grand Duke of Tuscany. Italian officials were frank that they had little room to maneuver in the face of British power. Following the apprehension of Hawes's murderers, officers of the Spanish garrison at Livorno demanded that the deserters be returned to them for punishment.⁹⁸ Rinuccini specifically ordered Capponi to refrain from involving the government in the reclamation of the deserters, no matter what arguments the Spanish might make to involve Tuscan authorities.⁹⁹ Rinuccini further wrote to Capponi that the Spaniards had little reason to complain that the Tuscan government had not proceeded as strongly as they did in the earlier case of the Neapolitan tartan, since “the Spaniards themselves, so much stronger and more powerful than us, will probably refrain from using force on the English Ship in

⁹⁷ Statements of witnesses to murder of Hawes and seizure of the *Dove* were transcribed in, *Select Trials at the Sessions-House in the Old-Bailey* (London, 1742), 4: 203-254. The execution of these mariners was recorded in March edition of *The London Magazine and Monthly Chronologer*, vol. 6, 1737 (London: 1737), 163-164.

⁹⁸ A Spanish garrison was installed in Livorno between 1731 in order to guarantee the succession of the Infante Don Carlo to the grand duchy of Tuscany under the terms of the treaties of Seville of 1729 and of Vienna of 1731. The garrison remained in the city until 1737, when it was replaced by an Austrian force to secure the succession of Francesco Stefano, the duke of Lorraine, to the grand duchy.

⁹⁹ Rinuccini to Capponi, Florence, 20 September 1736, ASF Mediceo del Principato, 2262.

order to reclaim the aforesaid Deserters from their Ship of War.”¹⁰⁰ After the Spanish forcibly removed the deserters from the British vessels, the Tuscan secretary of state, Giovanni Antonio Tornaquinci, commented that the British could have freed themselves and the Tuscans from much of the difficulties that followed the murder of Hawes if they had acted more quickly to remove the body and the murderers from Livorno.¹⁰¹

Conceptions of sovereignty as either territorially bounded or based on the relationship between the sovereign and the subject coexisted in early modern oceanic environments. While the apprehension of the *Dove* outside the port of Livorno allowed British jurists to assert Admiralty jurisdiction without concerning themselves with the competing claim of the grand duke, the fact that the case was one between subjects provided another avenue to assert that state's authority over the matter. When George Paul turned to the issue of whether the Spanish had any justification in their seizure of these sailors, he asserted that it had indeed been proper that they were detained on board British vessels, “being subjects to his Majesty” and having committed a crime “against Subject of His Majesty, and not against the Subjects of the Crown of Spain, or the Great Duke of Tuscany.”¹⁰² The authority of the state over its subjects was an organizing

¹⁰⁰ “Codesti Signori Spagnoli nel vedere, he si fa quanto si può, non dovrebbero con ragione punto dolersi, che non si pratici in questo caso che fù praticato poco fa nell'altro della Tartana colla Bandiera del Rè delle due Sicilie, e non dovrebbero molto rilevare, che si sospende di adoprare la forza per farsi consegnare i delinquenti Inglesi, che si trovano repartiti sopra le loro Navi in codesta spiaggia, poi ch egli stessi Signor Spagnoli tanto più grande e forti di noise asterranno probabilmente di usare la forza sulla Navi Inglesi per farsi restituire i pretesi Desertori della loro Nave da Guerra,” Rinuccini to Capponi, Florence, 20 September 1736, ASF Mediceo del Principato, 2262.

¹⁰¹ Tornaquinci to Pucci, Florence, 28 September 1736, ASF Mediceo del Principato, 4731.

¹⁰² George Paul to the Queen, Doctors Commons, 12 October 1736, TNA SP 98/84, f. 329r.

principle that cut across divisions between Europe and the wider world.¹⁰³ The questions raised by jurisdictional disputes over British ships in coastal waters reveal that the Mediterranean was part of a broad process wherein the basis and extent of sovereignty was debated.¹⁰⁴

V. *The Mediterranean and the Caribbean*

Jurisdictional disputes over crimes committed onboard British vessels in Mediterranean waters reveal the intersecting lines of sovereignty that shaped early modern oceanic space. They also illustrate the extent to which problems of legal authority at sea remained unresolved within Europe even as they were exported to the wider world. Cases like that of the *Dove* illustrate the temporally and geographically uneven process through which jurists defined the relationship between the sovereign rights vested in ships and those exercised over territorial waters. However, while problems of maritime sovereignty took different forms depending on the political conditions of different oceanic bodies, the issue of how rival lines of legal authority converged on board British vessels was a global problem. Within this context, rhetoric that linked national honor to the status and security of British navigation, most notably displayed in the Parliamentary debates leading up to the War of Jenkins' Ear, went beyond political ideology.¹⁰⁵ Concern for the “honour of the British colours” raised questions as to who could exercise legal

¹⁰³ On this point, see Paul Halliday, *Habeas Corpus: From England to Empire* (Cambridge, MA: Belknap Press, 2010), 259-267.

¹⁰⁴ Cf. Benton, *A Search for Sovereignty*, 128-129

¹⁰⁵ Cf. Kathleen Wilson, “Empire, Trade, and Popular Politics in Mid-Havonerian Britain: The Case of Admiral Vernon,” *Past and Present*, no. 121 (November 1988): 74-109 and Brendan Simms, *Three Victories and a Defeat*, chap. 10, “The Colonial Mirage, 1737-1739.”

authority over British vessels and where they could exercise such jurisdiction. Attempts to resolve these questions provide another means to consider how the Mediterranean fit within Britain's maritime expansion.

The case of the *Dove* revolved as much around the privileges to be accorded British ships in port of Livorno as in upholding Admiralty jurisdiction over those vessels. Following the apprehension of the *Dove* and Hawes's murderers outside the harbor of Livorno, officers from the Spanish garrison occupying Livorno under the provisions of the Treaty of Seville demanded that the Irish deserters be turned over to them for punishment. Two days after the murder of Hawes, troops from the Spanish garrison at Livorno boarded the ship holding the prisoners and carried away the deserters.¹⁰⁶ Though Tuscan officials took care to avoid involving themselves in such a contentious matter, Charles Fane reported that the forcible removal of the deserters by Spanish troops was looked upon as an “Act of violence” at Livorno, a port where “the Colours even on merchant ships” had been “hitherto respected.”¹⁰⁷ Both Henry Penrice and George Paul denounced the Spanish behavior, though Penrice concentrated on the violation of the security of Livorno, rather than on the perceived affront to English navigation.¹⁰⁸

Meanwhile, Capponi's intervention in the case and the exhumation of Hawes's body led Fane to complain that Tuscan officials “have not acted with all the moderation, & Regard

¹⁰⁶ The “status of forces agreement” which regulated this military presence specifically ordered the Spanish commander to defend the sovereignty of the grand duke and to refrain from interfering “mai punto del Governo Civile, Economico, Politico, e Mercantile della Città, e delle Cose della Sanità,” TNA SP 108/498. Following a complaint lodged by the English ambassador in Madrid, the sailors were eventually turned over to the British, Keene to de la Quadra, Escorial, 16 November 1736, TNA SP 94/126 and Fane to Newcastle, Florence, 25 December 1736, TNA SP 98/36.

¹⁰⁷ Fane to Walpole, Florence, 22 September 1736, TNA SP 98/36, also in BL Add. MS 73987, f. 239r-239v.

¹⁰⁸ Penrice, Doctors Commons, 25 October 1736, TNA ADM 1/3673, f. 469v.

due to the most considerable and most to be respected maritime power in the world.”¹⁰⁹

Like his contemporaries who complained of Spanish “depredations” in the Caribbean, Fane was sensitive to the treatment accorded British ships and to the particular importance of navigation for Britain's strength and reputation. In the Mediterranean, as in the Atlantic, the honor of British navigation frequently appeared imperiled by the legal and sovereign claims of other states.

The status of British navigation on the high seas became even more pressing in the eighteenth century in the context of the Anglo-Spanish maritime disputes that led to the War of Jenkins' Ear in 1739. Historians have focused on how the search and seizure of British vessels by the ships of the *guardacosta* reflected early modern empires' competition to control trade routes and oceanic corridors, but this approach also treats both the Anglo-Spanish confrontation and eighteenth-century tensions over British navigation within a specifically Caribbean perspective.¹¹⁰ In 1739, William Pulteney responded to Sir Robert Walpole's warnings that a war with Spain would disrupt English trade to the Mediterranean by noting that in that ocean, “as well as the American seas, the Spaniards have of late begun to make more free with the British flag, than ever they, or any other nation, durst do in time past.”¹¹¹ It is not clear which incidents Pulteney had in

¹⁰⁹ Fane to Walpole, Florence, 29 September 1736, TNA SP 98/36; also in BL Add. MS 73987, f. 243v.

¹¹⁰ On sea routes and sovereignty Benton, *A Search for Sovereignty*, p. 152. See also Richard Pares, *War and Trade in the West Indies, 1739-1763* (Oxford: Clarendon Press, 1936), 23-24, 34-38 and Woodfine, *Britannia's Glories: The Walpole Ministry and the 1739 War with Spain* (Woodbridge: The Boydell Press), 137-138.

¹¹¹ Cobbett, *The Parliamentary History of England from the Earliest Period to the Year 1803* (London: T. C. Hansard, 1806-1820), vol. 10, column 678. Pulteney warned that if the Spanish were allowed to continue their “depredations” in the Caribbean, “the same pretences may be set up for searching and seizing our ships in the Mediterranean, Bay of Biscay, and African Seas...nay, I am convinced, Spain or some other of our neighbours, will soon set up the same pretences for ruining out trade in the East Indies,” in *ibid.*,

mind when he spoke of Spanish abuses in the Mediterranean, but the case of the *Dove* was just one that pointed to the vulnerability of British navigation in that sea. Spanish forces at Livorno had previously stopped a British ship freighted with powder from leaving Livorno and there were periodic reports that corsairs carrying Spanish commissions planned to stop and search British vessels.¹¹² More importantly, underlying the rhetoric about the honor of the British flag that surrounded debates on the actions of the *guardacosta* were broader questions about law and sovereignty at sea that illustrated the continuities and differences between the trading regimes of the Mediterranean and Atlantic.

Central to both Anglo-Spanish negotiations over the actions of the *guardacostas* and Parliamentary debates over navigation in the Caribbean was the question of whether the Atlantic and Mediterranean occupied the same regulatory sphere. Specifically, it was uncertain if the treaties between England and Spain of 1667 and 1670 distinguished European and American waters.¹¹³ The treaty of 1667 permitted the Spanish to board British vessels at sea in order to ascertain their identity and cargo, a provision intended to

column 686. On the Mediterranean dimension of the War of Jenkins' Ear, see Richard Harding, *The Emergence of Britain's Global Naval Supremacy* (Woodbridge: The Boydell Press, 2010), 65-78, 129-139.

¹¹² A year before the affair of the *Dove*, an English ship sailing out of Livorno with a load of powder freighted by a Dutch merchant was stopped by Spanish officers, in apparent violation of their agreement to not interfere with the freedom of the port's trade, Fane to Newcastle, Florence, 14 August 1735, TNA SP 98/36. Brinley Skinner reported from Livorno in 1724 that a Spanish privateer that sailed into Porto Ferrajo with a dozen English sailors on board carried commission that called for it to visit ships of all colors to search for Jewish goods. The ship's French prize was restored to its master, but Skinner feared it would have proceeded against English shipping as readily as French, Skinner to Carteret, Livorno, 21 January 1724 and 25 February 1724, BL Add. MS 41504, ff. 1v-2r. In September 1733, it was reported that the British vice-consul at Malta had been warned that the commander of a Spanish man-of-war had announced he had orders to search ships of all nations for Ottoman passengers and cargo, John Edwards to Charles Delafaye, London, 20 September 1733, TNA SP 97/56, f. 197r-v.

¹¹³ Woodfine, *Britannia's Glories*, 110. See also Pares, *War and Trade in the West Indies*, 29-33.

prohibit British trade in contraband goods with the North African regencies. However, the articles also established strict guidelines for this procedure and specified that only the illegal goods could be seized. The Anglo-Spanish treaty of 1670, on the other hand, specifically focused on the Americas and had no provisions for or restrictions on searching vessels. Notably, while both ministers and opposition figures insisted on the freedom of British navigation on the high seas, they conceded Spanish officials' right to search vessels within the ports and harbors of that country's American empire, since these were clearly under the dominion of the king of Spain. Even Pulteney agreed that a nation might forbid foreign vessels from entering “the ports, havens, or creeks, within their dominions, because in these they may have an absolute property,” though it could not pretend to interrupt traffick upon the open seas, where no state held such dominion.¹¹⁴ At issue was how far out to sea the British acknowledged foreign sovereignty.

The question of whether Spain's enduring claim to sovereignty over American waters allowed it to search British vessels for contraband had Mediterranean echoes. Although treaties with the North African regencies provided that Admiralty passes safeguarded passengers and goods on board ships, the rulers of both Monaco and Savoy continued to exact the maritime duties on ships passing their coastlines that English and French ministers periodically labeled “piratical.”¹¹⁵ While the close alliance between

¹¹⁴ Cobbett, *The Parliamentary History*, vol. 10, column 683. Newcastle instructed Keene in April 1738 to insist on the freedom of navigation of British ships on the high seas and that they were to be searched only when in Spanish ports, Philip Woodfine, *Britannia's Glories*, p. 143. The merchants' petition of 11 October 1737, which called for the ministry to ensure “That no British Vessels be detained or Searched on the High Seas by any Nations, under any pretence whatsoever,” appears in Woodfine, *Britannia's Glories*, p. 245. The *Craftsman* on 30 Dec. 1738 called for the freedom of ships from search, even if “but a Cable's Length from the *French* or *Spanish* Ports,” p. 186.

¹¹⁵ M.S. Anderson's “Britain and the Barbary States in the eighteenth century,” *Bulletin of the Institute of Historical Research*, 29, no. 79 (May 1956): 87-107

Britain and Savoy during and following the War of the Spanish Succession had resulted in a de facto exemption of English vessels from the duty of Villafranca, ships were occasionally arrested for non-payment.¹¹⁶ In 1749 and in preparation for negotiations with France on the commutation of the duty levied on French vessels, the court of Turin sought to improve its bargaining position by insisting on British payment of the duty. Following the apprehension of several British vessels in the late 1740's and early 1750's, Britain followed France's example and commuted the duty for a one-time payment of £4000. Lord Rochford, the ambassador to Savoy, refused to concede British liability for the tax, but advised that it appeared worthwhile to settle the whole matter for a "meer trifle."¹¹⁷ By this means, the rulers of Savoy maintained their claim to sovereignty over Savoy's coastal waters, but absolved themselves of the political and diplomatic controversies that followed on enforcing that claim. Meanwhile, the growth of British naval power induced the Prince of Monaco to refrain from interfering with English navigation. In 1766, Horace Mann reported that an agent of the Prince of Monaco assured him that no efforts would be made to exact the duty from British, French or

¹¹⁶ In the seventeenth century, English vessels enjoyed partial immunity from this duty thanks to the privileges extended to that nation by the Savoyard decree of 1627 and by the Treaty of Florence of 1669. At the end of the seventeenth century, the farmers of the duty of Villafranca arrested British vessels that failed to pay, reflecting the Savoyard view that Finch's Treaty of Florence, which had freed English vessels from the duty, had fallen into obsolescence. In the first half of the eighteenth century, the handful of British vessels that were arrested for non-payment were released on the intervention of Britain's representatives, Michel Bottin, "Le Droit de Villefranche," 147-151; G.W. Rice, "British Consuls and Diplomats in the Mid-Eighteenth Century: An Italian Example," *The English Historical Review* 92, no. 365 (October 1977), 840.

¹¹⁷ France paid 1,400,000 livres to settle the duty in 1753, G.W. Rice, "British Consuls and Diplomats in the Mid-Eighteenth Century," 842-843. See also Luca Lo Basso, *In traccia de' legni nemici: corsari europei nel Mediterraneo del Settecento* (Ventimiglia: Philobiblon Edizioni, 2002), 67.

Dutch vessels, “as they were Powers too great to risk offending.”¹¹⁸ The slow and uneven process by which even minor principalities surrendered their claims to jurisdiction over British vessels passing their coasts nevertheless also revealed the enduring ability of foreign states to shape the legal and political environments through which British vessels sailed.

VI. *Conclusion*

As ships carried the authority of the Crown and of Admiralty courts throughout the Mediterranean, they became sites where the expansion of the British state collided with the sovereignty of other polities. As a result, ships also became sites where the sovereign and legal regimes of the Mediterranean were redefined and negotiated. By the end of the eighteenth century, the status of British vessels in Mediterranean waters appears to have become more stable. When the mate of a merchant ship sitting in Livorno's harbor was murdered in May 1751, the British consul had the murderer immediately transferred to a man of war in the port, in the event the Livornese government should decide to take cognizance of the matter.¹¹⁹ Yet, as the states of the western Mediterranean surrendered their more expansive claims to maritime sovereignty, the British increasingly conceded jurisdiction over crimes committed in territorial waters. Following a murder committed on board a British ship in Venice's harbor two decades later, Sir James Marriot was asked for his opinion on where authority lay to prosecute

¹¹⁸ Mann to the Earl of Shelburne, Florence, 22 November 1766, TNA SP 98/71, f. 258r; John Dick to Shelburne, Livorno, 21 November 1766, TNA SP 98/71, f. 255r.

¹¹⁹ Goldsworthy to Bedford, Livorno, 9 May 1751, TNA SP 98/55, f. 214r-v.

such crimes. Marriot argued that felonies committed within “any port, river, creek, or haven of the territory of any foreign power, those crimes do then fall under that particular local and territorial jurisdiction,” because “the power of punishment is always equal to and coincident with and inseparable from the power of protection.”¹²⁰

Marriot's verdict testified to increasing agreement among jurists in the late eighteenth century as to where judicial authority lay at sea. However, this growing consensus, which would itself be partially upended by revolution and imperial competition at the end of the eighteenth century, was not simply part of a larger teleology of territorial state formation within Europe. In 1760, the Lords Commissions for Appeals overturned the condemnation of a French ship taken near Hispaniola on account of its being seized within a neutral Spanish port.¹²¹ The recognition of sovereigns' claims over territorial waters was a global process that defied both contemporary and modern ideas that distinct legal regimes differentiated Europe from the wider world. As the case of the *Dove* and parallel incidents illustrate, uncertain and uneven sovereignty characterized maritime space within Europe as much as it did throughout the Atlantic and Indian Oceans.

¹²⁰ Report by Sir James Marriot, undated, in William Forsyth, *Cases and Opinions on Constitutional Law and Various Points of English Jurisprudence...* (London: Stevens & Haynes, 1869), 217. Also quoted in Prichard and Yale, “Introduction,” ccvii. Marriot's opinion was written in reference to a letter from Sir James Wright, who was the English resident at Venice between 1765 and 1773.

¹²¹ Reginald Marsden, ed., *Reports of Cases Determined by the High Court of Admiralty and upon Appeal therefrom...* (London: W. Clowes and Sons, Limited, 1885), 175. Conversely, in 1812, Sir William Scott ruled that the Admiralty had jurisdiction over a crime committed in a Cuban harbor and parallel decisions through the nineteenth century affirmed the Admiralty's authority over crimes committed onboard British vessels, see Prichard and Yale, “Introduction,” ccvii-ccviii.

Chapter 6:

“The Waters of the Exalted State”: Ottoman Sovereignty and British Jurisdiction in the Levant, 1744-1748

Upon the whole, these seem very new & lofty Ideas of the Porte, (if they are her own), first pretending to shut up her Seas, & next in this Scheme of preaching up Peace to the any contenting Princes of Christendom, which seems a Supplement to the other; but I much doubt whether they are now in any Condition to work Effects answerable to such magnificent Settings forth.¹

Imagined boundaries of maritime sovereignty and diverse avenues of jurisdictional authority demarcated and crisscrossed the waters of the early modern Mediterranean. The Mediterranean was also a sea whose political and legal geography was substantially defined by extra-European polities. Through the eighteenth century, Britain depended on Morocco and the North African regencies to provision its garrisons at Gibraltar and Minorca and treaties with those Muslim powers shaped the regulation of British navigation in that sea.² Muslim powers were not, however, simply auxiliaries to the development of a British empire in the Mediterranean. As the Ottoman government sought to secure its subjects and their trade from the effects of the War of the Austrian Succession, it affirmed and expanded its claims to sovereignty over Levantine waters.

¹ Stanhope Aspinwall to the Duke of Newcastle, Constantinople, 1 February 1745, TNA SP 97/32, f. 171r.

² On the importance of Morocco and the regencies for sustaining Britain's strategic position in the Mediterranean, see Linda Colley, *Captives: Britain, Empire, and the World, 1600-1850* (New York: Anchor Books, 2004), 70-72 and Nabil Matar, "Islam in Britain, 1689-1750," *Journal of British Studies* 47, no. 2 (April 2008): 290-293.

Moreover, in the face of a conflict that anticipated the global expansion of the British Empire in the following decades, Ottoman efforts to protect Levantine trade revealed that European empires were not alone in their pretensions towards oceanic sovereignty.³ Yet these efforts largely marked the end of an era during which European and Muslim polities equally shaped the Mediterranean world.

The Ottoman reaction to the outbreak of the War of the Austrian Succession highlighted the extent to which the interaction of various sovereign and jurisdictional authorities continued to define the legal and political environment of the Mediterranean. It also illustrated the efforts of members of the Ottoman political elite to adapt to changing eighteenth-century political conditions, as increasingly powerful and aggressive European rivals confronted the Ottoman Empire.⁴ European warfare that became increasingly global in scope in the eighteenth century threatened to disrupt Ottoman trade and the commercial arteries that sustained Constantinople.⁵ In response to the threat that Anglo-French naval warfare posed to the Ottoman economy, the Porte forbade belligerent vessels from attacking one another in the eastern Mediterranean and subsequently

³ For a summary of British naval activity during the 1740's and an excellent analysis of its political and strategic significance, see N. A. M. Rodger, *The Command of the Ocean: A Naval History of Britain, 1649-1815* (London: Allen Lane, 2004), 236-256. See also, Richard Harding, *The Emergence of Britain's Global Naval Supremacy: The War of 1739-1748* (Woodbridge: The Boydell Press, 2010). On the impact of English corsairs on French navigation in the Levant, see Paul Masson, *Histoire du Commerce Français dans le Levant au XVIII^e Siècle* (Paris: Librairie Hachette & C^{ie}, 1911).

⁴ On Ottoman adaptation to a changing strategic and geopolitical situation in the later half of the eighteenth century, see Virginia Aksan, *An Ottoman Statesman in War and Peace: Ahmed Resmi Efendi, 1700-1783* (Leiden: E. J. Brill, 1995) and eadem., *Ottomans and Europeans: Contacts and Conflicts* (Istanbul: Isis Press, 2004).

⁵ On British privateering in the Mediterranean in the mid-eighteenth century, see, Jean Pierre Filippini, *Il porto di Livorno e la Toscana (1676-1814)* (Naples: Edizioni Scientifiche Italiane, 1998), 2: 215-244; Daniel Panzac, *La caravane maritime: Marins européens et marchands ottomans en Méditerranée (1680-1830)* (Paris: CNRS Editions, 2004), 79-83.

proposed to mediate an end to the War of the Austrian Succession. Both these measures were significant political and diplomatic innovations for the Ottoman Empire. Although the Porte had previously ordered European vessels to refrain from combat in the Aegean, in 1744 it dramatically extended the limit of the waters over which it claimed sovereignty. Equally, the Ottoman government's effort to bring the War of the Austrian Succession to a close revealed the increasingly close connections that were drawing the empire deeper into the European diplomatic world.

The inability of the Ottoman Empire to enforce its claims to sovereignty over the Levant or to secure those waters from the effects of European warfare nevertheless points to the changing political conditions of the Mediterranean. As had been the case during the wars against Louis XIV, Ottoman efforts to establish the empire's sovereignty over Levantine waters intersected with the Admiralty's claim to jurisdiction over British warships and privateers and over any prizes they might capture. By holding England's Levant merchants responsible for the losses its subjects sustained at the hands of British privateers, the Ottoman Empire continued to define the legal conditions of trade and navigation in the Levant. Yet British naval power and jurisdictional authority in the Mediterranean also grew in tandem during this period. British ministers and jurists insisted that it was the sole responsibility of the High Court of Admiralty to adjudicate Ottoman complaints regarding the actions of privateers. As a result, the Admiralty became increasingly central to the legal organization of Levantine navigation.

Although the Mediterranean remained a legally pluralistic arena, by the mid-eighteenth century the balance of power in that sea was in the midst of a profound transformation. It would be another fifty years before the Levant factored into Britain's

own imperial ambitions; however, Ottoman defeats at the hands of Russia in the last quarter of the eighteenth century began the process that, for European diplomats, reduced the empire's significance to “the Eastern Question.”⁶ The War of the Austrian Succession marked a key moment in the history of Britain’s involvement in the early modern Mediterranean. In response to this conflict, the Ottoman Empire attempted to reestablish its dominance over the eastern Mediterranean. While that empire continued to shape the political environment in which British vessels sailed, Europe’s maritime powers nonetheless increasingly dominated Mediterranean waters.

I. Ottoman Maritime Sovereignty in the War of the Austrian Succession

Ottoman efforts to maintain the security of Levantine trade in the face of European wars led that empire to expand its claims to sovereignty over eastern Mediterranean waters. In early 1744, mutual declarations of war between Britain and France raised the prospect that British privateers would again descend into the eastern Mediterranean and disrupt the French navigation upon which Ottoman maritime trade substantially depended. Ottoman ministers responded to the threat that European warfare would spill over into the Levant much as their predecessors had done during the wars against Louis XIV. As before, the Ottoman government asserted the empire's intention to preserve the peace and security of its waters and sought to establish maritime boundaries

⁶ For a summary of Ottoman relations with Europe in the last quarter of the eighteenth century, see Christoph K. Neuman, “Political and Diplomatic Developments” in *The Cambridge History of Turkey*, vol. 3, *The Later Ottoman Empire, 1603-1839*, ed. Suraiya Faroqhi (Cambridge: Cambridge University Press, 2006), 57-58. For Britain's relationship to the Ottoman Empire at the end of the eighteenth century, see Allan Cunningham, *Anglo-Ottoman Encounters in the Age of Revolution*, ed. Edward Ingram (London: Frank Cass & Co., 1993).

within which belligerents were to refrain from hostile acts.⁷ The empire's ensuing efforts to prevent foreign combat in the eastern Mediterranean revealed the unsustainability of its sovereignty over those waters, but also demonstrated its continuing ability to shape the legal environment through which British vessels sailed.

As the War of the Austrian Succession escalated to incorporate war between France and Britain, the Ottoman government moved to limit its effects on Ottoman subjects and their trade by forbidding the warring powers from engaging in hostile acts in Levantine waters. In May 1744, the various European ambassadors and representatives in Istanbul were summoned to meet individually with the Grand Vizir, Seyyid Hasan Pasha, the diplomatically experienced *Reisülkülttab* or “Reis Efendi,” Tavukçubaşı Mustafa Efendi, and other senior Ottoman ministers.⁸ The Venetian ambassador, Zuanne Donado, left a detailed account of his meeting with the Ottoman officials. The Grand Vizir opened the interview by stating that in order to ensure that the escalation of warfare in Europe did not harm either Ottoman subjects trading by sea or the customs revenues of the empire, the Ottoman government had decided to forbid belligerents from committing hostile acts within Ottoman waters. Then, as Donado related:

⁷ The Ottoman effort to establish the neutrality of Levantine waters in response to the escalation of the War of the Austrian Succession has received little attention from scholars and has been approached as a peculiar incident within Ottoman-European interactions, without consideration of its legal or ideological ramifications. See Joseph Freiherr von Hammer-Purgstall, *Histoire de l'Empire Ottoman*, vol. 15, 1739-1757 (Paris, 1835), 79-80; A. C. Wood, “The English Embassy at Constantinople, 1660-1762,” *The English Historical Review* 40, no. 160 (October 1925), 555; Ismail Hakki Uzunçarsili, *Osmanlı Tarihi*, vol. 4, pt. 2, *XVIII yüzyıl* (Ankara: Türk Tarih Kurumu Basımevi, 1995), 584-585; Virginia Aksan, “Ottoman-French Relations, 1739-1768,” in *Studies on Ottoman Diplomatic History*, ed. Sinan Kunalalp (Istanbul: The Isis Press, 1987), 50-51; Maria Pia Pedani, *Dalla frontiera al confine* (Venice: Herder Editrice, 2002), 87 and idem, “Some Remarks upon the Ottoman Geo-Political Vision of the Mediterranean in the Period of the Cyprus War (1570-1573),” in *Frontiers of Ottoman Studies: State, Province, and the West*, ed. Colin Imber, Keiko Kiyotaki and Rhoads Murphey (London and New York: I. B. Tauris, 2005), 2:30.

⁸ For background on the Reis Efendi Tavukçubaşı Mustafa, see Aksan, *An Ottoman Statesman in War and Peace*, 25.

He [Mustafa Efendi] then revealed two papers, the one a printed map and the other a manuscript, which was the minute of the aforesaid project. On the first paper, on which was delineated the Ottoman Empire in Europe with all the seas that washed it, he showed me that the Porte wanted to establish limits in the Sea itself, within which the belligerent Powers were not to commit hostilities, but to navigate freely, and trade without danger. On the map was a Straight Line, indicating the ideal limit, which began at the Gulf of Arta [on the western coast of Greece, north of the Peloponnese], and ended on the coast of Africa, somewhat to the east of the sands of Barbary.⁹

The Reis Efendi then presented the ambassador with a copy of a letter given to all the European diplomats in Istanbul, which recounted that in previous European wars Ottoman merchants had sustained losses when they freighted the ships of belligerents and that it was feared that war in Europe would again provide corsairs with an opportunity to prey on Ottoman subjects. Consequently, in the face of the outbreak of war in Europe and in order to preserve the security of trade, the Ottoman emperor would forbid belligerents from engaging in any hostilities “in the waters belonging to his guarded Dominions, & in Places under his Jurisdiction,” (*memalik-i mahrusa sularında ve tabi olan yerlerde*). Any ships which engaged in hostile acts within the established boundaries would be seized and their crews condemned to the galleys. Moreover, the ambassadors of the different nations would be held accountable for any losses inflicted on Ottoman subjects by

⁹ “Sfodrò all'ora due Carte, l'una Geografica à stampa l'altra scritta, ch'era la minuta del progetto predetto. Nella prima Carta, in cui stava delineato lo stato Ottomano di Europa con tutti li Mari, che lo bagnano mi fece osservare, che dalla Porta volevano stabilirsi confini nel Mare stesso, dentro da quali le Potenze belligeranti non potessero commettere ostilità, mà navigare liberamente, et esercitare li loro traffici senza pericolo. Stava sopra il disegno una Linea Retta, indicante l'ideale confine, che aveva il principio alla punta del Golfo dell'Arta, et il fine alle spiagge di Africa, in poca distanza verso l'oriente dalle secche di Barbaria,” Zuanne Donado, Pera, 27 May 1744, ASV Dispacci dagli Ambasciatori Veneti da Constantinopoli, 199, f. 21r-v. The British and French representatives at the port reported similar interviews, Aspinwall to Newcastle, Constantinople, 18 May 1744 (OS), contained in letter of 12 May 1744, TNA SP 97/32, f. 81v-84r and Castellane, Constantinople, 23 May 1744, AN AE B/1/421.

privateers of their nation. The ambassadors were then asked to dispatch the letter to their respective sovereigns for consideration and ratification.¹⁰

The project to establish the security of the waters of the eastern Mediterranean expanded on a long history of Ottoman claims to a maritime empire. After the conquest of Constantinople, Ottoman sultans had styled themselves as “Sovereign of the Two Seas [the Mediterranean and the Black Sea],” and the sixteenth-century Ottoman expansion in the Mediterranean and into the Indian Ocean led to even broader professions of oceanic sovereignty.¹¹ After the expansion of the Ottoman sea-borne empire came to a halt in the late sixteenth century, both Ottoman ministers and European observers ascribed to the empire sovereignty over the Aegean.¹² During the War of the League of Augsburg and again during both the Wars of the Spanish Succession and of the Polish Succession, the Ottomans exercised that sovereignty when they forbade the belligerents from fighting within the Aegean.¹³ In 1744, the French ambassador, Michel-Ange de Castellane, saw

¹⁰ A copy of the Ottoman original, together with a French translation, is in AN AE B/1/421. I use the contemporary English translation, which closely follows the Ottoman. The English translations of the Ottoman document, together with an Italian translations, may be found in TNA SP 97/32, f. 89r-92r and 86r-88r, respectively.

¹¹ On Ottoman claims to sovereignty over the Mediterranean, see Franz Babinger, *Mehmed the Conqueror and his Time*, trans. Ralph Manheim (Princeton: Princeton University Press, 1978), 416; Halil Inalcik, *The Ottoman Empire: The Classical Age, 1300-1600*, trans. Norman Itzkowitz and Colin Imber (London: Weidenfield & Nicolson, 1973), 29. On Ottoman control and regulation of trade into and on the Black Sea, see Halil Inalcik, “The Question of the Closing of the Black Sea under the Ottomans,” *Archeion Pontou* 35 (1979): 74-110. For sixteenth century assertions of Ottoman oceanic sovereignty, see Giancarlo Casale, *The Ottoman Age of Exploration* (Oxford: Oxford University Press, 2010), 199.

¹² John Selden, *Of the Dominion, or, Owerntship of the Sea*, trans. Marchamont Nedham (London, 1652), 119-120.

¹³ On Ottoman declarations of the neutrality of the Aegean during the Wars of the League of Augsburg and of the Spanish Succession, see above chapter four. A French translations of a Ottoman order issued at the outbreak of the War of the Polish Succession, in 1734, forbidding the French and Austrians from committing any hostilities “dans toute l’etendue de cette parte de mer qui est en deça du Cerigo,” may be found with Castellane’s letter of 27 May 1744, AN AE B/1/421.

the annual voyage of the Kapudan Pasha to the Aegean islands as a means to prevent hostilities between belligerents in those waters, “which the grand signore claims belong to him from Constantinople to Cerigo and over which he pretends a right of sovereignty, comparable to that which the Venetians wish to claim over the Adriatic Sea.”¹⁴

Ottoman efforts to establish borders and limits in the eastern Mediterranean suggested, however, that their conceptions of maritime sovereignty were at once fluid and littoral.¹⁵ The limits on European naval warfare established by Ottoman ministers during wars of the late seventeenth and early eighteenth centuries ran through the islands of the Aegean; in 1704, the English ambassador Sir Robert Sutton described the limit established during the War of the League of Augsburg as a “line” drawn “acrosse from the Asia shore to Samos, thence to Icaria, & forward to Andros & so to Negropont.”¹⁶ It was this insular dimension that defined Ottoman sovereignty over the waters of the Aegean. In addition, an Ottoman order of 1720 prohibited North African corsairs from attacking Venetian ships within a thirty-mile band along the Ottoman coast.¹⁷ Although the Ottomans thus had a long history of establishing “limits in the sea” or “limits on the

¹⁴ “...que le grand seigneur pretend luy appartenir de puis Constantinople jusques au Cérigo et dan les quelles il affeits un droit de souverainete, semblable a celui que les Venitiens vouloient s'attribuer dans la mer Adriatique, Castellane, Constantinople, 12 May 1744, AN AE B/1/421. Aspinwall reported rumors that the Kapudan Pasha's commission included order to the effect of “preserving the Tranquility of the Ottoman Seas” in the even of hostilities between English and French vessels, Aspinwall to Newcastle, 12 May 1744, TNA SP 97/32, f. 79r-v.

¹⁵ Molly Greene, “The Ottomans in the Mediterranean,” in *The Early Modern Ottomans: Remapping the Empire*, ed. Daniel Goffman and Virginia Aksent (Cambridge: Cambridge University Press, 2007), 104-116.

¹⁶ Robert Sutton, Pera, 8 November 1704, TNA SP 97/21, f. 182r.

¹⁷ Pedani, *Dallan frontiera al confine*, 83-84; Andrew C. Hess, “The Forgotten Frontier: The Ottoman North African Provinces during the Eighteenth Century,” in *Studies in Eighteenth Century Islamic History*, ed. Thomas Naff and Roger Owen (Carbondale and Edwardsville: Southern Illinois University Press, 1977), 79.

surface of the sea” (*deryada hudud* and *ruy-i deryada hudud*), these maritime boundaries aimed at the control of insular and littoral space.¹⁸ Moreover, despite equally extensive Ottoman experience in the negotiation and physical demarcation of terrestrial borders, cartographers rarely illustrated linear political boundaries in favor of depicting vaguely defined frontier zones.¹⁹ Drawing a line on a map to create a border in the sea was thus a highly innovative way to represent Ottoman maritime sovereignty.

When Ottoman ministers drew a straight line through open seas to prohibit European vessels from engaging in hostile acts in the Levant, they established a “sea-border” in what had historically been a frontier space.²⁰ In the process, they reconceptualized the empire's relationship to maritime space. The prohibition on European naval warfare in the eastern Mediterranean of 1744 appears to be among the earliest examples, and perhaps the first, of a specific expression for “Ottoman waters” (in the expressions *memalik-i mahrusa suları* and *devlet-i aliyye suları*) and consequently suggests a more assertive claim to sovereignty over maritime space than the empire had

¹⁸ The order of March 1698 from the Sultan to the Kapudan Pasha and to the kadi at Smyrna repealing the maritime limits of 1696 speaks of “*deryada hudud tayyin olunup*” or “*constituere limiti in Mare*,” TNA SP 105/334, f. 31v, 32r.

¹⁹ In this respect, however, they did not differ entirely from their European counterparts, who often also used fortresses, rather than linear boundaries, to define frontiers. On the representation of political space on Ottoman maps, see Brummett, “Imagining the Early Modern Ottoman Space, from World History to Piri Reis,” in *The Early Modern Ottomans*, 50-54; eadem., “The Fortress, Defining and Mapping the Ottoman Frontier in the Sixteenth and Seventeenth Centuries,” in *The Frontiers of the Ottoman World*, ed. A. C. S. Peacock (Oxford: Oxford University Press for the British Academy, 2009), 31-56. On the demarcation of Ottoman frontiers, see Dariusz Kolodziejczyk, *Ottoman-Polish Diplomatic Relations, (15th-18th Century): An Annotated Edition of 'Ahdnames and Other Documents* (Leiden: Brill, 2000), 57-67; Pedani, *Dalla frontiera al confine*, 42-46; Palmira Brummett, “Imagining the Early Modern Ottoman Space,” 24-26.

²⁰ Pedani, “Some Remarks upon the Ottoman Geo-Political Vision of the Mediterranean,” 30.

yet made.²¹ The letter given to the European representatives during their audience with the Grand Vizir confirmed the extent of Ottoman sovereignty over Levantine waters when it prohibited ships from approaching “the islands which are located in the waters of the exalted state to the east of the line or the open seas or the coasts of Rumeli and Arabia” (*o khatin sharqina vaqi devlet-i aliyye sularında bulunan bilcümle cezirelere ve açık enginlere ve rumeli ve arabistan kıyılarına*). Ottoman sovereignty thus did not simply cross the sea with ships and imperial orders; instead, it was vested in the sea itself.²² European observers certainly thought the Ottoman proposal would expand that empire's maritime sovereignty, as when the French Secretary of State for the Marine, the Comte de Maurepas, told the Venetian ambassador in Paris that the project appeared to be designed to give the Porte “il Dominio del Mare in que' limiti.”²³

The source of this new conception of Ottoman maritime sovereignty is unclear. Both Donado and the acting British agent at Istanbul, Stanhope Aspinwall, suspected that the French were behind the Ottoman proposal, which would naturally favor that nation, whose ships dominated the rich coastal trade that formed a lifeline between Istanbul and the rest of the Ottoman Empire.²⁴ Their suspicions particularly fell onto the French

²¹ See the copy of the Ottoman document in, AN AE B/1/421. See also, İdris Bostan, “Osmanlılarda Deniz Sınırı ve Karasuları Meselesi,” in *Türkler ve Deniz*, ed. Özlem Kumrular (Istanbul: Kitap Yayınevi, 2007), 38-39. Bostan refers to the use of these expressions in documents dated to 1745.

²² Cf. Brummett, “Imagining the early modern Ottoman space,” 48.

²³ Corner to Senate, Paris, 13 August, 1744, ASV Dispacci dagli Ambasciatori Veneti da Francia, 235, f. 76r-v.

²⁴ According to Aspinwall, for every one English ship taken in the Levant, forty French ships would likely be captured, Aspinwall to Newcastle, 12 May 1744, TNA SP 97/32, f. 80v. Aspinwall was the chancellor of the British embassy at Constantinople and was chargé d'affaires between 1742 and 1746, in the absence of the official ambassador, Edward Fawkenor.

military adventurer turned Ottoman pasha, Claude Alexandre de Bonneval.²⁵ In fact, although he acknowledged that it favored the French over other nations, Castellane, the French ambassador, opposed the Ottoman proposal.²⁶ Bonneval, however, claimed credit for the idea of the divisionary line, though he appears to have subsequently distanced himself from the project after he learned that the French disapproved of it.²⁷ Moreover, the use of *sular* to signify Ottoman “waters” is likely a calque, directly translating a Europe conception of maritime sovereignty into Ottoman usage. It is unclear, though, whether new expressions for Ottoman waters testify to Bonneval's influence or to increased diplomatic contacts that might have exposed Ottoman ministers to European conceptions of maritime sovereignty.

Efforts to prohibit privateering and naval warfare in eastern Mediterranean waters indicated the Ottoman commitment to protect Levant trade and to maintain the empire's dominance in the eastern Mediterranean. The presentation of the plan to secure Ottoman waters itself seems to illustrate how the Ottomans adopted European technologies in the interest of strengthening the empire. Donado recounted that Ottoman ministers used a printed map to illustrate the divisionary line they had drawn through the Mediterranean

²⁵ Aspinwall to Newcastle, Constantinople, 21 May 1744, TNA SP 97/32, f. 96v; Donado to Senate, Constantinople, 27 May 1744, ASV Dispacci degli Ambasciatore Veneti da Constantinople, 199, f. 25r-v.

²⁶ Castellane objected that French ships would be vulnerable to both European and North African corsairs and privateers if warships could not accompany them to Ottoman ports. Experience had shown that the Ottoman Empire was itself unable to guarantee the security of vessels even under the guns of its own fortresses, Castellane, Constantinople, 27 May 1744, AN AE B/1/421.

²⁷ Ibid. For other references to Bonneval's authorship of the divisionary line to establish Ottoman neutral waters or participation in the development of the idea, see Hammer-Purgstall, *Histoire de l'Empire Ottoman*, 15: 80; Albert Vandal, *Le Pacha Bonneval* (Paris: Cercle Saint-Simon, 1885), 79; Uzunçarşılı, *Osmanlı Tarihi*, vol. 4, pt. 2, 585.

and Castellane further described the map as a “carte turque.”²⁸ These descriptions suggest that the map used by the Reis Effendi to delineate the extent of Ottoman waters may have been one produced by the empire’s first officially sanctioned printing press, which was instituted in 1727 by the Hungarian-born Ibrahim Müteferrika.²⁹ If so, the delineation of Ottoman waters on a printed map reflects a long history of Ottoman cartographers using European sources and charts in their work and further suggests that Ottoman engagement with outside ideas helped to define and to extend the empire’s maritime sovereignty.³⁰ From this perspective, it is significant that both Donado and Aspinwall saw the Ottoman proposal as a mixture of indigenous and outside influences. Suggestively, Donado speculated that while the idea for the project came from an external source, it was then “extended beyond necessity, and also beyond possibility, either on account of the lack of experience in such kinds of matters of those who were assigned to conceive it, or perhaps on account of the natural prejudice of Ottoman arrogance, which believed it possible to

²⁸ Castellane, Constantinople, 23 May 1744, AN AE B/I/421.

²⁹ On İbrahim Müteferrika and the printing of maps by his press, see Niyazi Berkes, “İbrahim Müteferrika,” in *The Encyclopedia of Islam*, vol. 3, *H-Iram*, ed. H. A. R. Gibbs and others (Leiden: Brill, 1967), 996 and also Ahmet T. Karamustafa, “Introduction to Ottoman Cartography,” in *Cartography in the Traditional Islamic and South Asian Societies*, ed. J. B. Harley and David Woodward (Chicago: University of Chicago Press, 1992), 218-226; Maurits van den Boogert, “İbrahim Müteferrika Printing House in Istanbul,” in *The Republic of Letters and the Levant*, ed. Alastair Hamilton, Maurits H. van den Boogert, and Bart Westerweel (Leiden and Boston: Brill, 2005), 266-268; Yasemin Gencer, “İbrahim Gencer and the Age of the Printed Manuscript,” in *The Islamic Manuscript Tradition: Ten Centuries of Book Arts in Indian University Collections*, ed. Christiane J. Gruber (Bloomington: Indiana University Press, 2010), 154-193. A map of the Mediterranean appeared in three of the books published by Müteferrika’s press, *Tuhfet el-Kibar fi Efsar el-Bihar*, the *Tarih-i Hindi-Garbi* and the *Cihannuma*, although it is not clear if this is the map mentioned by Donado. On this map of the Mediterranean basin, see Bülent Özükan, ed., *Kitabi-ı Cihannüma= The Book of Cihannuma* (Istanbul: Boyut Publishing Group, 2008), 72-73.

³⁰ On the relationship of European and Ottoman cartography in the fifteenth and sixteenth centuries, see Jerry Brotton, *Trading Territories: Mapping the Early Modern World* (London: Reaktion Books, 1997), chap. 3, “Disorienting the East: The Geography of the Ottoman Empire.”

impose subjection to the greatness of the Empire on all, without having the strength to oppose them.”³¹

The proposal to guarantee the peace and tranquility of the eastern Mediterranean indeed highlighted Ottoman naval weakness as much as it demonstrated the empire's claims to maritime sovereignty. Donado's account of the Ottoman reaction to early attacks by English privateers on French ships in the Levant revealed the extent to which that empire's naval weakness limited its ability to regulate the waters over which it claimed sovereignty. In August 1744, Robert Saunders of the privateer *Ruby* captured a French ship sailing from North Africa to Athens. Following this attack, rumors circulated that British consuls had advised Ottoman subjects that their safety could not be guaranteed on board French vessels. According to Donado, Ottoman ministers turned to Bonneval for advice as to how the empire could avoid such attacks on its interests and dignity.³² Bonneval blamed the government's inability to secure its waters on the neglect of the navy, since “when the Porte did not think to revitalize the state of its navy, its subjects and its dignity would be exposed and it would be reduced to depend on the will of foreign Nations in matters of the sea.”³³

³¹ “Fù poi l'idea stessa estesa oltre il dovere, et anche oltre il possibile ò per difetto di esperienza in tal genere di negozij di quelli, che furono incaricati di concepirla, ò forse per il natural pregiudicio dell'elatezza Ottomana, che crede forse possibile alla forza e grandezza dell'Impero l'impor soggezione à tutti, senza trovar forza sufficiente à contraporvi,” Donado, Pera, 3 December 1744, ASV Dispacci degli Ambasciatori Veneti da Constantinopoli, 199, f. 226r-v. See also, Aspinwall to Newcastle, Constantinople, 9 November 1744, TNA SP 97/32, f. 134v-134r.

³² Donado to Senate, Buyukdere, 26 September 1744, ASV Dispacci degli Ambasciatori Veneti da Constantinople, 199, f. 114r; Aspinwall to Newcastle, Belgrade, 16 August 1744, TNA SP 97/32, f. 107r-v.

³³ “La sua esposizione sopra questo à lui non nuovo argomento, fù in sostanza, che quando la Porta non pensasse à invigorire lo stato suo di marina sarebbe esposta ne suoi sudditi, e nella sua dignità e riddotta à dipendere nelle cose del mare dagli arbitrii delle forestiere Nationi,” Donado to Senate, Buyukdere, 26 September 1744, ASV Dispacci degli Ambasciatori Veneti da Constantinople, 199, f. 114r.

The Ottoman efforts to protect the eastern Mediterranean from the effects of European warfare highlighted the limited degree to which that empire could safeguard the security of its subjects within the waters over which it claimed sovereignty. Since the Ottoman Empire lacked the naval power to enforce its declared maritime boundaries unilaterally, the Porte's proposal was one that depended on the approval and mutual agreement of all the belligerent nations. However, European representatives and governments were unwilling to support a proposal that appeared both impracticable and unsustainable. The Venetian ambassador in Paris reported that Maurepas doubted whether European states would accept a proposal through which “the Turks would appropriate the Dominion of the Sea within those limits.”³⁴ Castellane, meanwhile, argued that it was against the law of nations to prohibit the ships of warring nations from fighting one another on the high seas.³⁵ Neither Aspinwall nor the other European representative at Constantinople explicitly objected to the Ottoman Empire's right to exercise sovereignty over the high seas. Instead, they focused on the practical difficulties of the plan, as when Aspinwall judged the idea of “a Line to be drawn cross so large a Sea is the most Chimerical thing that ever was imagined.” The agent then explained, “there are doubtless great difficultys, if not Impossibilitys, to observe a Line, which cannot be fixt, or demonstrated, upon the Sea, as upon a Sea Chart;” consequently, it would prove impossible to determine precisely whether ships were taken within or

³⁴ “Che di questo modo li Turchi si arrogarebbero il Dominio del Mare dentro di que' limit, il quale non così facilmente egli credeva verrebbe gli acconsentito dalle altre Potenze,” Girolamo Corner to the Senate, Parigi, 13 August 1744, ASV Dispacci degli Ambasciatori Veneti al Senato, Francia, 235, f. 76v.

³⁵ Castellane, Constantinople, 27 May 1744, AN AE B/1/421; Maurepas to Castellane, Versailles, 2 August 1744, AN Marine B/7/180, f. 214r.

without the proposed line.³⁶ Moreover, since British privateers were forbidden to interfere with neutral property and persons, the edict seemed directed primarily at pirates, for whose behavior the British Crown could not be held accountable.³⁷ The draft of a letter from the English government to the Ottoman ministers in response to the proposal highlighted the infeasibility the proposal, and, in the process, tacitly rejected the Porte's claim to establish the neutrality of the designated expanse of sea.³⁸

Following the initial Ottoman proposal to safeguard Levantine waters, Castellane had suggested that the empire adopt an approach that was not dependant upon securing the agreement of all the belligerent parties.³⁹ The ambassador thought the Porte might better take the approach it had previously adopted during the War of the Polish Succession, between 1733 and 1738, when it issued an order to officials throughout the empire that prohibited maritime combat within the Aegean and forbade Ottoman subjects from serving onboard vessels of the belligerents.⁴⁰ As it became clear that the initial proposal would prove unworkable, the Porte issued an order in August 1744 that reaffirmed its intention to preserve the security of the previously demarcated Ottoman waters, but which sought to provide a means to protect Levantine trade without European

³⁶ Aspinwall to Newcastle, Constantinople, 12 May 1744, TNA SP 97/32, f. 83r.

³⁷ Ibid.

³⁸ See Sir Everard Fawkener's draft letter, 6 August 1744, TNA SP 97/56, f. 172v-176r (the folios run in reverse order in this document).

³⁹ Castellane, Constantinople, 27 May 1744, 18 June 1744, and 25 July 1744, AN AE B/I/421.

⁴⁰ Unlike the later proposal, this command did not call for the arrest of vessels that violated the neutrality of Ottoman waters and of their prizes. Instead, it instructed officials to send the captains of ships who violated Ottoman neutrality to Constantinople where they were to be reprimanded by the representatives of their nation. A French translation of this order of 10 April 1734 accompanied Castellane's letter of 27 May, 1744, AN AE B/I/421.

cooperation.⁴¹ Accordingly, European consuls were instructed to make an inventory of all goods freighted by Ottoman subjects on their nations' ships, so that effective restitution could be made in the event a ship was seized by enemies.⁴² Aspinwall suspected that this new order testified to Ottoman realization that their original decree was impractical, the repetition of the original proposal coming, "as it were, by way of Preamble."⁴³ In fact, when Castellane discouraged any mention of the divisionary line, he found that the Reis Effendi continued to favor the idea of such a line.⁴⁴

As the War of the Austrian Succession wore on and attacks between British and French vessels continued in the Levant, the Porte increasingly emphasized its intention to prohibit hostile acts within the ports and harbors of the empire and under the guns of fortresses.⁴⁵ In part, the Ottoman focus on ports and littoral waters reflected the geographical conditions of the eastern Mediterranean and the sailing practices of both privateers and merchantmen. In the close waters of the Aegean, ships were rarely out of sight of land and privateers tended to lie in wait outside of ports and at predictable choke points. A firman that paralleled the order of August 1744 was issued a year later at the

⁴¹ Italian and English copies of this decree of 1 September 1744 may be found in TNA SP 97/32, f. 143r-144r and 145r-147v. French copies follow Castellane's letter of 16 September 1744, AN AE B/I/421.

⁴² Donado and Aspinwall both credited the French with advising the Ottomans on the revised order, Donado to the Senate, Constantinople, 3 December 1744, ASV Dispacci degli Ambasciatori Veneti da Constantinopoli, 199, f. 226r-v and Aspinwall to Newcastle, Constantinople, 9 November 1744, TNA SP 97/32, f. 133r-v. However, Castellane objected to this provision, since it appeared to make the French responsible for losses Ottoman subjects sustained onboard their vessels, Castellane, Constantinople, 16 September 1744, AN AE B/I/421.

⁴³ Aspinwall to Newcastle, Constantinople, 9 November 1744, TNA SP 97/32, f. 134r.

⁴⁴ Castellane, Constantinople, 16 September 1744, AN AE B/I/421.

⁴⁵ A proposed order in 1746, on the other hand, commanded European warships not only to refrain from bringing prizes into Ottoman ports, but also to not enter those ports, at all, "Extract of a Letter to the Levant Company from Mr. Aspinwall," Constantinople, 16 April 1746, TNA SP 97/32, f. 315r; Aspinwall to Newcastle, Constantinople, 24 June 1746, f. 321v-322v.

request of the chief customs officer at Constantinople, upon the seizure of Swedish and French ships in proximity to Ottoman ports.⁴⁶ Nevertheless, the Porte seems to have begun to define “the waters of the protected domains” as those in the vicinity of ports and harbors and within the range of fortresses' cannon.⁴⁷ In September 1745, Aspinwall reported that the Kapudan Pasha had been directed to determine whether a French prize captured by the man-of-war *Diamond* had been taken within the guns of the castle at Candia or not. If the Kapudan Pasha determined that the prize had been seized on the open sea, it was to be esteemed a good prize.⁴⁸

Though the project of 1744 extended and reconceptualized Ottoman maritime sovereignty, subsequent efforts to safeguard Ottoman trade in the face of European naval warfare suggest that sovereignty over oceanic space was secondary to the primary Ottoman concern of protecting subjects and their trade.⁴⁹ In this respect, Ottoman attitudes mirrored those prevalent in other early modern empires, as their claims to sovereignty over Levantine waters centered on preserving the trade of the empire's subjects and its commercial arteries.⁵⁰ Following an engagement between French and

⁴⁶ Uzunçarşılı records the issuance of a firman in response to the seizure of the French and Swedish ships in the summer of 1745 that, like the one of August 1744, forbade combat within Ottoman waters and directed the European consulates to provide bail for the transport of Ottomans goods and subjects, *Osmanlı Tarihi*, vol. 4, pt. 2, 584. Aspinwall does not mention the subsequent firman. Italian and English translations of the customer's memorial and of Aspinwall's reply may be found in, Aspinwall to Newcastle, Constantinople, 7 August 1745, TNA SP 97/32, f. 255r-269v.

⁴⁷ Bostan, “Osmanlılarda Deniz Sınırı ve Karasuları Meselesi,” 38.

⁴⁸ Aspinwall to Newcastle, Constantinople, 30 August 1745, TNA SP 97/32, f. 274r-v. See also Bostan, “Osmanlılarda Deniz Sınırı ve Karasuları Meselesi,” 45, n. 44.

⁴⁹ See also Greene, “The Ottomans in the Mediterranean,” 115-116.

⁵⁰ Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400-1900* (Cambridge: Cambridge University Press, 2010), 149-158.

English privateers at Smyrna, Donado wrote that the weak Ottoman response to the incident indicated that “the sole object of the Porte is to repair the prejudices, which might be inflicted upon its subjects, and its own commerce, and consequently to the royal Treasury, and that short of these concerns it will give little thought to the depredations, that occur between belligerents, even if they commit them in waters, which following the universal laws [*le legge universali*] ought to be respected.”⁵¹

In fact, the Ottoman government would seek to maintain the security of its ports and harbors through the War of the Austrian Succession. In this respect, the extent of Ottoman waters seems to have fallen once more into line with wider Mediterranean practice. The inability of the Porte to safeguard Levantine waters should not, however, detract from the significance of its assertion of Ottoman sovereignty over them. At a time when British conceptions of their maritime empire yet outshone the practical possibilities of British naval power, it is significant that Ottoman ministers could still imagine the eastern Mediterranean to be an Ottoman lake. Claims to maritime sovereignty in the Mediterranean, as in the Atlantic and Indian Oceans, were all but unenforceable, but they reflected early modern empires’ efforts to control movement across oceanic space. The Porte’s retreat from its initially expansive delineation of Ottoman waters did not signify that it was any less committed to promoting the security of its subjects at sea. Instead, as ministers increasingly focused on the specific harm done to Ottoman subjects by

⁵¹ “...che l'unico oggetto della Porta è di riparare alli pregiudicj, che possono essere inferiti à Sudditi suoi, et al proprio commercio, et in conseguenze alle reggie Dogane, e che salvi questi riguardi poco pensiero sarà per prendersi delle depredazioni, che succedessero trà le parti belligeranti, tutto che si commettessero in acque, che secondo le leggi universali dovrebbero essere rispettate,” Donado to the Senate, Pera, 3 December 1744, ASV Dispacci degli Ambasciatori Veneti da Constantinopoli, 199, f. 228r-v.

European naval warfare, it behaved like other early modern polities, which found it more practical to protect and regulate subjects than to police expanses of open sea.

II. *An Ottoman Offer of Mediation*

Unable to enforce the security of Ottoman waters, the Porte turned to a more radical solution to end the harmful effects of European war on Ottoman trade. In February 1745, the various foreign ministers at Constantinople were again brought in turn before the Grand Vizir. According to Aspinwall, the Vizir opened the meeting “with a sort of Harangue upon the Calamities of War” and on the negative impact of war upon commerce and, in particular, on the increasing price of cloth and other necessities in the capital. The Vizir then stated, “that the Port could wish, from mere Sentiments of Humanity, & Friendship to all, to see such Differences between the Christian Powers composed.”⁵² The English agent, like the other European representatives in the city, was then given a letter to forward to his court.⁵³ As Aspinwall noted, the letter was more a “Homily upon Peace” than it was a concrete proposal and seemed “to engage the Porte in nothing.”⁵⁴ Yet, despite its imprecise terms, the Ottoman diplomatic intervention into the War of the Austrian Succession was nevertheless viewed as an offer of mediation.⁵⁵

⁵² Aspinwall to Newcastle, Constantinople, 1 February 1745, TNA SP 97/32, f. 167r-v. See also the account of the Venetian bailo of his meeting with the Grand Vizir, Donado to the Senate, Pera, 9 February 1745, ASV Dispacci dagli Ambasciatore Veneti da Constantinople, 199, f. 286v-287r.

⁵³ Aspinwall reported that letters were given to the Austrians, Russian, French, Swedish, Venetian, Neapolitan representatives and others were sent to the governments of Prussia and Poland, Aspinwall to Newcastle, Constantinople, 1 February 1745, TNA SP 97/32, f. 167v

⁵⁴ Ibid. f. 168r, 171r.

⁵⁵ See, for instance, Ibid. f. 169r; Aspinwall to Harrington, Belgrade near Constantinople, 19 June 1745, TNA SP 97/32, f. 234v, 236r; Porter to Newcastle, Constantinople, 21 February 1747, TNA SP 97/33, f. 24r.

Writing in the years immediately following the events he recorded, Süleyman İzzî, the Ottoman *vak'anüvis* or court historian, confirmed this interpretation when he explained that the Sultan had been motivated by his concern for the security of his subjects and their trade, “to reconcile the two sides with the intervention of the exalted state.”⁵⁶

Although political cooperation and diplomatic exchanges with European states were an established part of Ottoman statecraft at this time, the Porte's vague offer of mediation highlighted a broad transformation in the empire's relationship with Europe over the course of the eighteenth century.⁵⁷ Since the sixteenth century, Ottoman interactions with Europe had taken place within an ideological perspective based on the centrality of imperial expansion for the advancement of the Ottoman state and of the Muslim religion.⁵⁸ The eighteenth century was a period during which Ottoman ministers struggled to balance the ideological foundations of the Ottoman Empire with the realities of its declining power relative to European rivals.⁵⁹ The Porte's desire to bring an end to the War of the Austrian Succession did not translate into a desire to integrate the empire into European diplomatic or state systems. Instead, interviews in which the Grand Vizir expressed the Ottoman wish that the European states should make peace were in keeping with the Ottoman tradition of unilateral diplomacy; the suggestion that Ottoman

⁵⁶ “...devlet-i aliyye-yi ebed-müddetin tavassutiyle islah-ı zatülbeyne,” Süleyman İzzî, *Tarih-i İzzî* (Istanbul, 1786), f. 21r. İzzî was *vak'anüvis* from 1745 to 1753, see Feridun Emecen, “İzzî, Süleyman Efendi,” in *Türk Diyanet Vakfı İslam Ansiklopedisi* (Istanbul: Türkiye Diyanet Vakfı, 1988), 23: 565-566.

⁵⁷ For a synthetic treatment of this point, see Faroqhi, *The Ottoman Empire and the World Around it* (London: I. B. Tauris, 2004), chap. 2, “On Sovereignty and Subjects: Expanding and Safeguarding the Empire.”

⁵⁸ For a discussion of the relationship between Ottoman political ideology and its relationship to “reform” literature in the eighteenth century, see Virginia Aksan, “Ottoman Political Writing, 1768-1808,” *International Journal of Middle Eastern Studies* 25, no. 1 (February 1993): 53-69.

⁵⁹ Aksan, *An Ottoman Statesmen in War and Peace*, passim.

diplomats be dispatched to European courts with the letter of peace was rejected. For an empire preoccupied by a long-running war with Persia, prohibitions on European privateering and offers of mediation were diplomatic strategies to sustain Ottoman influence without burdening the empire with further war. However, these measures also illustrated the slow process by which the Ottoman Empire was drawn into the orbit of European diplomacy and competition.

The fact that the letter dispatched to the various European courts appears to have been written by one of the most diplomatically experienced of Ottoman ministers illustrated the relationship between the Porte's offer of mediation and its gradually strengthening diplomatic and political connections with Europe. The European representatives at Constantinople were in agreement that the letter had been written by the Reis Efendi, Tavukçubaşı Mustafa.⁶⁰ Mustafa Efendi had played a role in the negotiations leading to the Treaty of Belgrade in 1739 and he seems to have taken an interest in European affairs.⁶¹ Aspinwall had suspected that Mustafa Efendi, "a great Projector," might have been involved in the planning of the earlier declaration that forbade the ships of the belligerent powers from fighting one another in the eastern Mediterranean; Aspinwall's successor at Constantinople, Sir James Porter, described the Reis Effendi "the ablest Man at this Court."⁶² European diplomats were also unanimous

⁶⁰ The *Reisülkülttab*, or Reis Efendi, was head of the Ottoman chancery and, from the late seventeenth century, had become central to the conduct of foreign relations. On this office and its development through the first half of the eighteenth century, see Norman Itzkowitz, "Mehmed Raghib Pasha: The Making of an Ottoman Grand Vizier" (PhD Diss., Princeton University, 1959), 110-117; Aksan, *An Ottoman Statesmen in War and Peace*, 18-19.

⁶¹ Aksan, *An Ottoman Statesmen in War and Peace*, 24-26.

⁶² Aspinwall to Newcastle, Constantinople, 19 July 1744, TNA SP 97/32, f. 104r.

in the condescending tone in which they described the letter, in which, according to Aspinwall, the Reis Effendi had “displayd all his Rhetorick & Pedantry in the Composition.” Aspinwall further thought that the Porte’s offer of mediation was the result of foreign influences.⁶³ Castellane, meanwhile, reported that the Reis Efendi had sought “to display his asiatic eloquence” in the letter and noted that even the most skilled of the French dragomans had struggled to translate it.⁶⁴

The letter of peace dispatched to the courts of Europe revealed the changing perspective of members of the Ottoman political elite towards the empire’s relationship with Europe.⁶⁵ Significantly, the letter began with a preamble that established peace to be the proper and preferred condition for mankind. It recounted that God had created mankind as the object of the creation of the universe; subsistence in this life in order to attain the next depended on peace and security and the pursuit of commerce and crafts. The letter’s author then adopted a humoral language to describe wars as the means provided by the “Eternal Physician” (*hakim-ı lem*) to punish those who did not observe good laws and to maintain the equilibrium of human society. Conflict was thus natural to society, but it ought to cease once order was restored, since God commanded reciprocal friendship and forbade hostility. After establishing that peace was the preferred condition for mankind, the letter then turned to the present state of affairs in Europe. Although the European sovereigns claimed to have entered into war on the basis of just causes, they

⁶³ Aspinwall to Newcastle, Constantinople, 1 February 1745, TNA SP 97/32, f. 171v. Donado credited the letter to the “Grand Cancelliere,” which would have been Mustafa Efendi, see Donado to the Senate, Pera, 9 February 1745, ASV Dispacci degli Ambasciatore Veneti da Constantinople, 199, f. 287r.

⁶⁴ Quoted in Zevort, *Le Marquis d’Argenson*, 185, n. 3.

⁶⁵ Aksan offers a brief discussion of this letter in “Ottoman-French Relations, 1739-1768,” 50, but it still awaits a critical study.

had prolonged it “without a lawfull and reasonable Cause” (*bela-ı mucib şer'i ve 'aqlı*). Moreover, the harmful effects of war had spread beyond Europe. The Ottoman government warned that war promised to continue into the next year with great bloodshed and to the detriment of trade as a result of fighting among the belligerents in Ottoman waters. In order to bring a stop to the destruction of war and to preserve the security of merchants, the Sultan accordingly commanded that the belligerent sovereigns be informed, “how laudable before God and before men, and how desirable is a just and reasonable Peace” (*sulh u silahın 'indallah ve 'indennas emr-i mergub ve matlub idigi dostan*). Finally, the recipient of the letter was directed to represent its contents to his ruler and to confirm whether the sovereign was inclined to peace and what were his directions towards that end.⁶⁶

Like the offer of mediation itself, the Ottoman letter dispatched to the courts of Europe highlighted the changing ideological and political context of the Ottoman Empire’s diplomatic relationships with European states. Particularly, the defense of peace as the proper and preferred condition for mankind displayed in the preamble anticipates arguments that Mustafa Efendi’s protégé, the official and historian Ahmed Resmi Efendi, would later make to demonstrate that peace with European countries served the strategic interests of the Ottoman Empire.⁶⁷ In particular, Ahmed Resmi warned against the

⁶⁶ The text of the Ottoman letter is copied in İzzi, *Tarih-i İzzi*, f. 21v-22v. Italian and English translations of the letter, addressed to the Duke of Newcastle, appear in TNA SP 97/32, f. 175r-178r and 179r-183r, respectively. Italian and Latin translations of this letter also appear in the Venetian archives, ASV Dispacci dagli Ambasciatori Veneti da Constantinople, 199, f. 291r-293v and 295r-298r, respectively. In my summary of the letter, I rely on the contemporary European translations to provide a full sense of the text. When quoting from the letter, I use the contemporary English translation.

⁶⁷ For Ahmed Resmi's writings on the Ottoman Empire's relationship with Europe, see Aksan, *An Ottoman Statesmen in War and Peace*, 195-205.

destructive and often self-defeating effects of military expansion and instead emphasized the ability of sovereigns to preserve their subjects from the harmful consequences of war.⁶⁸ Unlike Ahmed Resmi Efendi's later work, the letter of 1745 emphasized the importance of balance among the states and peoples of the world without launching into an explicit discussion of the balance of power. Since the letter was written for European rather than Ottoman consumption, it is unclear just how it relates to traditional ideas regarding the relationship of the Ottoman Empire to Christian states. Even so, its praise for peaceful coexistence suggests ideological changes that were occurring within segments of the Ottoman political elite, as ministers adapted to a situation in which the Porte relied on European allies and mediators to hold back the advances of its imperial rivals.⁶⁹

Like the Porte's proposal to maintain the security of Ottoman waters, its efforts to reestablish peace in Europe responded to the threat that European warfare posed to Ottoman commerce. Aspinwall and the Venetian, Austrian and Russian representatives nevertheless all doubted that Ottoman ministers would have taken "so formal a Step, & so general a one" as to make overtures of peace to all the European states merely because cloth was scarce at Constantinople and customs revenues were down.⁷⁰ Instead, they suspected the Porte's actions stemmed from French or Swedish instigation and from the influence of Bonneval. This view, however, reflected the tendency among European diplomats to ascribe the Porte's decisions to outside influence; in fact, food shortages in

⁶⁸ Ibid., 195-198.

⁶⁹ Aksan, "Ottoman Political Writing, 1768-1808," *passim*.

⁷⁰ Aspinwall to Newcastle, Constantinople, 1 February 1745, TNA SP 97/32, f. 168r-v.

Constantinople were a constant concern to the Ottoman government and Anglo-French warfare threatened to disrupt the trade in provisions that flowed through Levantine waters.⁷¹ The *vak‘anüvis*, Suleyman İzzi, echoed the Grand Vizir’s explanation for the measure when he explained that the Ottoman government decided to intervene peacefully in the War of the Austrian Succession after the French and English began to fight one another in Ottoman waters, interrupting the empire’s trade, causing prices to rise and harming the state’s customs revenues.⁷² The later English ambassador, Sir James Porter, backed away from Aspinwall’s assumption that an outside influence was responsible for the Ottoman proposal. When Porter wrote to Newcastle in February 1747 to request a formal reply to the Vizir’s offer, he observed that it had been at first assumed that the offer was the result of French instigation. However, he reported that it had subsequently emerged that the Porte’s actions probably stemmed from the “repeated Complaints” of the chief customs officer regarding the decline of revenues as a result of European warfare, which had prompted the Reis Effendi to find “this expedient.”⁷³ French records further confirm this interpretation.⁷⁴

Although economic motivations prompted the Ottoman desire to see an end to the War of the Austrian Succession, the Porte’s diplomatic intervention in the conflict illustrated at once the changing political relationship between the Ottoman Empire and

⁷¹ On concern within the Ottoman government regarding the provisioning of Constantinople in the first half of the eighteenth century, see Finkel, *Osman’s Dream*, 364.

⁷² İzzi, *Tarih-i İzzi*, f. 21r. See also Aksan, “Ottoman-French Relations,” 50.

⁷³ Porter to Newcastle, Constantinople, 21 February 1747, TNA SP 97/33, f. 24r-v.

⁷⁴ François Rousseau, “L’Ambassade du Comte de Castellane a Constantinople, 1741-1747,” *Revue des questionnes historiques* 70 (1901): 434.

Europe and noticeable limits to its integration into the world of European politics. In early 1745, Donado reported that the issue of how the empire should respond to Anglo-French warfare in its waters was discussed during a conference of Ottoman ministers, presumably a meeting of the *Divan-i Hümayun*. During this meeting, it was proposed that envoys should be dispatched to Austria and especially to France and Britain in order to establish some convention for the security of Ottoman commerce. Rumors circulated that Mehmed Said Efendi, who had led an Ottoman embassy to Paris three years earlier, had been delegated to act again as envoy to that country.⁷⁵ Meanwhile, other officials who Donado described as the “più accreditati del Ministero” warned that this step was unlikely to lead to positive results as long as the ability of the empire to back up diplomacy with force was limited on account of its war with Persia.⁷⁶ These ministers also worried whether the envoys “would be received or treated in a manner corresponding to their character and to the dignity of the Empire,” since European governments had previously resisted hosting Ottoman diplomats.⁷⁷ Consequently, it was resolved that the undertaking more suited “to the present system of Europe, and to the

⁷⁵ Donado to the Senate, Pera, 3 February 1745, ASV Dispacci degli Ambasciatore Veneti da Constantinople, 199, f. 268r-269v. Aspinwall also mentions the rumor that Mehmed Said Pasha had been designated envoy to France, Aspinwall to Newcastle, Constantinople, 1 February 1745, TNA SP 97/32, f. 167v.

⁷⁶ Donado to the Senate, Pera, 3 February 1745, ASV Dispacci degli Ambasciatore Veneti da Constantinople, 199, f. 269v-270r.

⁷⁷ “...posero in vista il dubbio che tali Ministri o non fossero ricevuti o non trattati in modo corrispondente al carattere loro, et alla dignità dell’Impero,” Donado to the Senate, Pera, 9 February 1745, ASV Dispacci degli Ambasciatore Veneti da Constantinople, 199, f. 285r. For a brief discussion of this point, see G. R. Berridge, “Diplomatic Integration with Europe before Selim III,” in *Ottoman Diplomacy: Conventional or Unconventional?*, ed. A. Nuri Yurdusev (Houndmills: Palgrave Macmillan, 2004), 123-124. On the difficulties encountered during the creation of permanent Ottoman embassies to European states at the end of the eighteenth century, see Carter Vaughn Findley, *Bureaucratic Reform in the Ottoman Empire: The Sublime Porte, 1789-1922* (Princeton: Princeton University Press, 1980), 126-132.

actual conditions of this Empire” was to limit the Porte’s intervention to the dispatch of letters to the European courts.⁷⁸

The diverse reactions of diplomats at Constantinople to the Porte’s offer of mediation revealed the degree to which Europeans were equally uncertain as to how to understand and manage the evolving relationship between the Ottoman Empire and Europe. Aspinwall recorded that following his audience with the Grand Vizir he had a conversation with the Swedish envoy at Constantinople, who Aspinwall suspected may have influenced the Porte’s intervention in European affairs. Aspinwall told the other diplomat that it seemed strange for the Ottomans to display suddenly such concern for “the Effusion of Christian Blood,” and all the more so since divisions among Christian rulers appeared to work in the Porte’s interest. The Swedish envoy replied that the Ottomans had changed greatly in the preceding hundred years, “that they were now civilised, & had more refined way so thinking, & were come off their ancient Ferocity, & seemed disposed to imbibe other more Christianlike Maxims.” The Grand Vizir’s letters to the various powers of Europe were an example of this change, since it was “a thing His Highness never condescended to do before.”⁷⁹ Conversely, Aspinwall thought that “however the Turkish Manners may be changed, their Interest in seeing the Christian Powers at variance, can never I suppose change, but with their Religion.”⁸⁰ Donado similarly dismissed the Ottoman offer as a means by which that government sought to

⁷⁸ “Più adattato partito al presente sistema di Europea, et alle circostanze attuali di questo Impero si sostenne quello di spedir lettere à Principi concependole in termini non meno blandi che cauti,” Donado to the Senate, Pera, 9 February 1745, ASV Dispacci degli Ambasciatori Veneti da Constantinople, 199, f. 285r.

⁷⁹ Aspinwall to Newcastle, Constantinople, 1 February 1745, TNA SP 97/32, f. 170r-v.

⁸⁰ Aspinwall to Newcastle, Constantinople, 1 February 1745, TNA SP 97/32, f. 170v-171r.

color, with a pretended desire for peace, “quelle massime di predominio, e violenza” that were natural to it.⁸¹

Through the eighteenth century, the Ottoman Empire increasingly factored into European diplomacy and state competition. European attitudes towards increased diplomatic integration with the Ottoman Empire were, however, as ambiguous and conflicted as those found within the Ottoman government.⁸² Through the early modern period, there was considerable uncertainty among European jurists and theorists as to whether the law of nations was universally applicable or only regulated relations between the states of Europe.⁸³ Sir James Porter, who was one of the more sympathetic European observers of that empire, opined in 1768 that “The Turks have properly no ideas of the law of nations: they consider themselves as the only nation on earth, and regulate their whole conduct with others on positive compact, spontaneous concessions, or usage and custom.”⁸⁴ While such observations reflected ideological and institutional barriers that excluded the Ottoman Empire from an increasingly self-conscious community of European states, they also testify to the fact that different legal and diplomatic cultures

⁸¹ Donado to the Senate, Pera, 26 February 1745, ASV Dispacci dagli Ambasciatori Veneti da Constantinople, 199, f. 312r.

⁸² For a survey of different eighteenth-century views of the Ottoman Empire, see Aslı Çırakman, *From the “Terror of the World” to the “Sick Man of Europe”: European Images of Ottoman Empire and Society from the Sixteenth Century to the Nineteenth* (New York: Peter Lang, 2002), chap. 3, “Prejudice Rationalized: Images of the Turks in the Age of Reason.”

⁸³ Christian Windler, “Diplomatic History as a Field for Cultural Analysis: Muslim-Christian Relations in Tunis, 1700-1840,” *The Historical Journal* 44, no. 1 (March 2001): 79-80; Suraiya Faroqhi, *The Ottoman Empire and the World around it* (New York: I. B. Tauris, 2004), 68-69. On the extent to which the early-modern law of nations extended beyond intra-European diplomacy, see also, C. H. Alexandrowicz, *An Introduction to the History of the Law of Nations in the East Indies (16th, 17th and 18th Centuries)* (Oxford: Clarendon Press, 1967), 9-13.

⁸⁴ Sir James Porter, *Observations on the Religions, Law, Government, and Manners of the Turks* (London, 1768), 2:21.

equally separated the Ottoman Empire from Europe.

Like the effort to delineate officially the expanse of the waters of the Ottoman Empire, the offer to mediate an end to the War of the Austrian Succession illustrated the efforts of Ottoman ministers to adapt to a changing geopolitical situation. Nevertheless, the Porte was in neither a diplomatic nor a military position to advance its desire to see peace in Europe. Among the European courts to which the Grand Vizir's proposal of mediation was extended, only that of Naples accepted the offer. Others tactfully declined and the British government, despite the repeated urgings of its representatives at Constantinople, seems to have failed to respond at all.⁸⁵ Asked whether the Ottomans should insist upon their offer of mediation in the event the European powers refused, Bonneval supposedly advised against it, "unless they could send 100,000 Plenipotentiaries to the Congress."⁸⁶ The French foreign minister, the Marquis d'Argenson, echoed this opinion when he suggested that as long as the Ottoman Empire was preoccupied with war with Persia, it would be unable to influence those states that declined its offer of mediation, "they would perhaps carry it out more realistically and with more appearance of success if they could march 20 or 30,000 men to Belgrade."⁸⁷ Unable to secure eastern Mediterranean waters or to bring the European conflagration to a close, Ottoman merchants were left to pursue legal recourse in Ottoman and British

⁸⁵ Aspinwall to Newcastle, Constantinople, 11 July 1745, TNA SP 97/32, f. 242v. Porter to Newcastle, Constantinople, 21 February 1747, TNA SP 97/33, f. 24v. For the Neapolitan government's acceptance of the offer and the refusal of other European states, see Hammer-Purgstall, *Histoire de l'Empire ottoman*, 15: 89; Aksan, "Ottoman-French Relations," 50.

⁸⁶ Aspinwall to Newcastle, Belgrade, 19 June 1745, TNA SP 97/32, f. 236r-v.

⁸⁷ Zevort, *Le Marquis d'Argenson*, 185

courts for compensation for the losses they suffered as a result of Anglo-French warfare in the Levant.

III. *Admiralty Jurisdiction in the Levant*

As during previous periods of Anglo-French warfare in the Levant, the capture of French vessels by British warships and privateers called into question where legal authority lay in the waters of the eastern Mediterranean. Ottoman decrees that asserted an intention to restore unlawfully captured ships and goods to their owners rested on that empire's sovereign claims over its waters and its subjects, but potentially collided with the legal authority of the British Admiralty, which claimed sole jurisdiction over prizes taken by British ships. Prize cases consequently became complex affairs with legal proceedings taking place simultaneously in Britain and in the Ottoman Empire. Moreover, as British courts heard cases that involved Ottoman merchants and subjects, they confronted the problem of how to adapt their standard procedures to distinct Ottoman legal and commercial practices. Their efforts to take into account customary practices that differed between Europe and the Ottoman Empire highlighted their recognition that multiple sources of legal authority existed in the Mediterranean. It was, however, testimony to the spreading authority of British Admiralty courts that British jurists found themselves confronted with the problem of how to take into consideration different legal and cultural traditions.

Unlike British diplomats during the wars against Louis XIV, neither Aspinwall nor Sir James Porter specifically questioned the jurisdiction of Ottoman officials to adjudicate prizes taken into Ottoman ports. Aspinwall complained when the pasha of

Tripoli, in Syria, ordered a Levant Company ship to return two French prizes it had “lawfully taken” on the grounds that they had been seized too close to shore.⁸⁸ While his judgment that the prizes were “lawfully taken” confirms that he did not accept the expansion of Ottoman waters beyond ports and harbors, Aspinwall nonetheless did not explicitly contest the authority of the Ottoman official to invalidate those captures.⁸⁹ Since the Ottoman pasha had confiscated the disputed ships, he had also removed the possibility that English representatives and merchants in the Ottoman Empire would be held accountable for their restitution. Consequently, the seizure of the prizes was not a matter of great diplomatic concern.

Conversely, Admiralty jurisdiction over prize cases opened a second avenue of jurisdictional authority in Levantine waters. Ottoman subjects whose goods were on board French ships brought before prize courts were instructed to proceed through the avenues of British justice in order to obtain restitution of their goods. After Robert Saunders, the commander of the *Ruby*, seized several French ships in 1744 and 1745, the Ottoman merchants who had freighted those ships protested that their goods had been condemned together with the ships. When called upon to give his opinion on the case, the advocate-general of the Admiralty, William Strahan, noted that the Ottoman merchants had “just Cause of Complaint,” because they were neutrals and subjects of a power in

⁸⁸ Aspinwall to Newcastle, Constantinople, 11 July 1745, TNA SP 97/32, f. 240r-v. Aspinwall warned, however, that if such behavior among Ottoman officials continued, British privateers would begin to take their prizes directly to Port Mahon, causing further inconveniences for any Ottoman subjects who might be aboard the ship, Memorial of Aspinwall to, Constantinople, 2 August 1745, TNA SP 99/32, f. 268v.

⁸⁹ Cf. Robert Sutton's declaration that Ottoman courts could not invalidate a French prize taken by an English ship because maritime matters fell outside the scope of Ottoman law, “Sir Robert Suttons account concerning the King William which took a French Prize, & the Purser a Hostage for the ransom, released by the Turks,” TNA SP 97/21, f. 199v. This issue is discussed in full in chapter 4.

amity with Britain. However, since the prize court had declared the ships in question to be valid prizes before the Ottoman merchants had lodged their complaints, they had no recourse but to appeal to the Lords Commissioners of Appeals.⁹⁰ Strahan reiterated that an appeal to the Lords Commissioners was the only avenue of redress for the Ottomans after the members of the Levant Company suggested that Saunders might alternatively be prosecuted for breaching the terms of his commission.⁹¹ It would be nearly four years before the merchants' goods were restored, a resolution which came through an agreement between the Levant Company and the owners of the *Ruby* rather than through a verdict of the Commissioners of Appeals, though the Commissioners overturned the condemnation of the prize in light of this agreement.⁹² This long delay came despite the urging of the Levant Company that the appeal be rushed, lest the Ottoman government decide to compensate its subjects for their losses through the seizure of goods belonging to British merchants in the Levant.⁹³

Both diplomats and the directors of the Levant Company recognized that the requirement that Ottoman merchants seek redress for their losses through the institutions of British law raised practical difficulties and problems of the incompatibility of different legal traditions. They consequently sought to treat the restitution of Ottoman goods as a

⁹⁰ William Strahan to Corbett, Doctors Commons, 9 October 1745, TNA ADM 7/298, f. 279r-v.

⁹¹ The Lords Justices apparently recommended prosecuting Saunders, but Strahan responded that by the terms of the Act of 1744 for the Encouragement of Seamen and Privateers, the Crown had no interest in prizes following their condemnation and thus any appeal had to be made in the name of the interested parties. The appeal was made by the king's proctor, in the name of the effected Ottoman merchants, Governor and Company to Aspinwall, London, 21 June 1745, TNA SP 105/117.

⁹² Deputy Governor and Company to Porter, London, 14 April 1749, TNA SP 105/118, 103.

⁹³ Aspinwall to Newcastle, Constantinople, 9 February 1746, TNA SP 97/32, f. 302r; Governor and Company to Aspinwall, London, 4 March 1746, TNA SP 105/118, 6; Governor and Company to Porter, London, 14 April 1749, TNA SP 105/118, 103.

diplomatic, as well as a legal matter. Following the seizure of another French ship carrying Ottoman passengers and their goods by a British privateer, Aspinwall advised that since the Ottoman subjects had lost their papers when the ship was seized, their requests for restitution should be treated “somewhat in a publick Light, & not merely as a Lawsuit.”⁹⁴ The directors of the Levant Company further warned that if effective measures were not taken to compensate Ottoman losses, “the Government at Constantinople may take some sudden violent Measures, dangerous as well to the Persons as the Estates of His Majesty's British Subjects.”⁹⁵ Yet, despite Aspinwall's suggestion for a diplomatic resolution of the Ottoman merchants' case and Newcastle's later assurances to Sir James Porter that some method to satisfy Ottoman demands would be found, both the Crown and British lawyers saw Ottoman claims in a primarily judicial light.⁹⁶ The correspondence between the Levant Company and Britain's ambassadors to the Ottoman Empire is thus an endless litany of requests for documentation and copies in order to support the cases of Ottoman claimants.⁹⁷

⁹⁴ Aspinwall to Newcastle, Constantinople, 9 February 1746, TNA SP 97/32, f. 302r.

⁹⁵ Representation of the Levant Company to Newcastle, London, 6 February 1745, TNA SP 97/56, f. 188r.

⁹⁶ Newcastle to Porter, Whitehall, 4 November 1746, TNA SP 97/33, f. 13r. For British intentions to proceed judicially against those captains who violated the security of Ottoman subjects, see variously, Porter to Newcastle, Constantinople, 21 February 1747, TNA SP 97/33, f. 23v-24r. The Levant Company wrote Aspinwall at the end of 1745 to instruct him that aggrieved Ottoman merchants should make out a letter of attorney so that someone could carry on their case in London and to advise the Ottomans that “no Money can be recovered or paid without it,” Governors of the Levant Company to Aspinwall, London, 10 December 1745, TNA SP 105/118, 2.

⁹⁷ For instance, see in volume TNA SP 98/118: Governor and Company to Porter, London, 18 September 1747, 42-43; *ibid.*, 2 December 1747, 51-53; *ibid.*, London, 28 March 1747, 64-65; *ibid.*, London, 7 April 1748, 67-68; Committee of the Levant Company to Porter, London, 20 May 1748, 73-75; Governor and Company to Porter, London, 14 September 1748, 84.

The legal formalities of prize adjudication made redress for Ottoman merchants an even more difficult and time-consuming process than it was for their European counterparts. The distance between Britain and the Ottoman Empire made it particularly difficult for Ottoman merchants to bring their cases before prize courts, especially when they found that British officials were reluctant to assist their efforts. In March 1746, Aspinwall reported that three of the merchants whose goods had been aboard the captured French ship *St. François de Paula* had set off for England with a letter of attorney but found that British officials at Minorca were unwilling to let them proceed and planned to return to the Levant after failing to find a ship to take them to England.⁹⁸ Uncooperative behavior by British officials at Minorca does not suggest a more general disregard for the judicial claims of Ottoman merchants. In December 1745, the Levant Company directors were advised by the advocates at Doctors Commons that Ottoman merchants seeking redress should send the Secretary of State a letter of attorney empowering someone in Britain to take up their claim in court.⁹⁹ The Company itself approved Porter's subsequent proposal that aggrieved Ottoman merchants should delegate some of their number to come to London in order to pursue their cases.¹⁰⁰

An appeals process slowed by both geography and procedure was insufficient to meet the diplomatic and political situation faced by the Levant Company and Britain's representative at Constantinople. Five months after he requested that the case of Saunders' victims be addressed diplomatically rather than judicially, Aspinwall was

⁹⁸ Aspinwall to Newcastle, Constantinople, 29 March 1746, TNA SP 97/32, f. 308r-v.

⁹⁹ Governor and Company to Aspinwall, London, 10 December 1745, TNA SP 105/118, 1-2 and copy of counsel's opinion on how Ottoman subjects should proceed in their appeal, *ibid.*, 4.

¹⁰⁰ Governor and Company to Porter, London, 28 March 1747, TNA SP 105/118, 66.

forced to make good the losses from the Company's treasury.¹⁰¹ The Company's directors viewed the sums disbursed as advances on the restoration or restitution of Ottoman victims' losses and hoped to recoup these and other sums expended following the course of the appeals, but they were realistic about the difficulties this entailed.¹⁰² In September 1747, the Company advised Porter that despite new orders to privateers to refrain from disturbing Ottoman subjects, it held little hope for reimbursement for its expenses on behalf of Ottoman merchants, since “we are referred to the Law, from whence little is to be expected, as the Proofs there required are so difficult to be got.”¹⁰³ Though the Company urged that the British government speed the adjudication of prizes, it also sought to avoid establishing a precedent whereby Ottoman claimants secured redress without pursuing their cases in court.¹⁰⁴ The Company reiterated, “it is not the Nation, who are obliged, by any Turkish, or Frank Law, to make good their Losses, but the Captain, who took their Goods, and sold them at Leghorne.”¹⁰⁵ The Company was thus not judicially obligated to redress the losses of the Ottoman subjects; however, it would compensate those merchants for two-thirds the value of their goods, out of compassion. While this would settle Ottoman complaints, it also meant that the Company would

¹⁰¹ Aspinwall to Newcastle, Constantinople, 24 June 1746, TNA SP 97/32, f. 320r-v.

¹⁰² Committee of the Levant Company to Porter, London, 24 December 1747, TNA SP 105/118, 56-58.

¹⁰³ Governor and Company to Porter, London, 18 September 1747, TNA SP 105/118, 41.

¹⁰⁴ Company to Porter, London, 14 April 1749, TNA SP 105/118, 103-104.

¹⁰⁵ Director and Company to Porter, London, 31 May 1750, TNA SP 105/118, 155.

probably never recover the money it expended: once satisfied, the Ottoman merchants would not continue their legal appeals.¹⁰⁶

Complicating redress for Ottoman victims of British privateers were different commercial and legal traditions. Early in the War of the Spanish Succession, Sir Robert Sutton had protested when the Grand Vizir declared that he expected the goods of the empire's subjects found aboard French ships to be returned to their owners and requested restitution of Ottoman goods recently taken from a French vessel. According to Sutton, this was an impracticable condition, not only because Ottoman subjects "colored" French goods, but also because "the Turks neither using [*sic*] to take Bills of Lading nor Certificates from the Customers of the Ports where they lade their Goods," it would be impossible to determine the true value of the goods.¹⁰⁷ This particular problem may have been less serious by the middle of the eighteenth century. In 1732, the French government had required that Muslim merchants provide written bills of lading, encouraging the adoption of written contracts within the primarily oral culture of Ottoman merchants. Moreover, in 1744, the Porte directed Ottoman subjects freighting European ships to register their inventories and manifests with the appropriate consuls, precisely to ensure that appropriate restitution could be obtained.¹⁰⁸

Nevertheless, the problem of bridging different mercantile cultures continued during the War of the Austrian Succession. The Admiralty recognized the need to take into account Ottoman customs when it advised the Levant Company and Britain's

¹⁰⁶ Director and Company to Porter, London, 31 May 1750, TNA SP 105/118, 156.

¹⁰⁷ Sutton, Pera, 22 July 1706, TNA SP 97/21, f. 210r-211r.

¹⁰⁸ Panzac, *La caravane maritime*, 11-12; Molly Greene, *Catholic Pirates and Greek Merchants: A Maritime History of the Mediterranean* (Princeton: Princeton University Press, 2010), 182.

diplomats in the Ottoman Empire that it would accept affidavits from Ottoman subjects “sworn upon the Alcoran, or according to their usual Way of Swearing” and authenticated by a “Mollah or Caddee.”¹⁰⁹ Apparently, this was inadequate, as Porter later complained that Ottoman subjects would not take the oaths required by the Admiralty to authenticate documents, “so that any Evidence from hence to recover from the Captors will be ineffectual without our Laws will conform to theirs, or that our Courts of Law will be content with a Declaration that the evidence they require is not conformable to that of this Country & consequently not to be obtained.”¹¹⁰ Although his letters do not provide enough detail to be certain, it is possible that Porter’s difficulties stemmed from the fact that in *shari’a* courts oaths were taken more seriously than in their European counterparts and were thus administered as a last resort when witnesses and notarized documents were insufficient or unavailable.¹¹¹ The Secretary of State, the Duke of Bedford, warned that English courts “will not abate any Part of what is required in legal Procedures here;” it appears, however, that the Ottoman merchants who appeared before Admiralty courts in London swore oaths to testify to their ownership of the goods in question.¹¹²

¹⁰⁹ Governor and Company to Porter, London, 2 December 1746, TNA SP 105/118, 53-54.

¹¹⁰ Porter to Bedford, Constantinople, 25 April 1748, TNA SP 97/33, f. 316r; Governor and Company to Porter, London, 28 March 1747, TNA SP 105/118, 65. However, the directors of the Company later advised Porter that, “the Lawyers now say that Our Law agrees so far with the Turkish Law, that a Man's own Oath in proof of his own property will not avail him and therefore do not think any further Declaration or Decree of a Caddi necessary,” London, 17 November 1748, TNA SP 105/118, 92.

¹¹¹ Sami Zubaida, *Law and Power in the Islamic World* (London: I. B. Tauris, 2003), 68-69.

¹¹² Bedford to Porter, Whitehall, 3 June 1748, TNA SP 97/33, f. 346v; Governor and Company to Porter, London, 15 July 1748, TNA SP 105/118, 78.

Despite the difficulties they encountered, the efforts of Aspinwall and Porter to balance Ottoman customs with the legal requirements of the prize courts anticipated Sir William Scott's assertion early in the nineteenth century that the Admiralty Court should not hold Ottoman subjects "to the utmost rigour of that system of public laws, on which *European States* have so long acted, in their intercourse with one another."¹¹³ If this attitude partially excluded the Ottoman Empire from a law of nations that was gradually but increasingly limited to European states, it also recognized the existence of extra-European legal systems and the need to make allowances for them.¹¹⁴ In the mid-eighteenth century, however, considerable uncertainty surrounded the relationship between British courts and extra-European legal customs.

Compared to earlier Anglo-Ottoman negotiations over the actions of English privateers in the Levant, the letters of British diplomats in the period of the War of the Austrian Succession suggest a more pronounced sense that distinct legal regimes divided the Ottoman Empire from Europe. During the wars against Louis XIV, British diplomats had opposed Ottoman prohibitions on naval warfare in the Aegean by asserting that such expansive maritime limits were against the law of nations and the universal customs of countries.¹¹⁵ French diplomats protested the Ottoman proposal of 1744 along similar lines, but British officials appear to have made little use of such arguments at this later

¹¹³ R. G. Marsden, ed., *Reports of Cases Argued and Determined in the High Court of the Admiralty and upon Appeal therefrom...*, 1: 172. Governor and Company to Porter, London, 2 December 1747, TNA SP 105/118, pp. 53, 68, 75.

¹¹⁴ Cf. Majd Khadduri, "Islam and the Modern Law of Nations," *The American Journal of International Law* 50, no. 2 (April 1956): 365-366.

¹¹⁵ Lord Paget had asserted that holding the English Crown responsible for the actions of thieves and corsairs amounted to an innovation that was contrary "alle Leggi della Marina, che sono regole praticate generalmente da tutti Potentati," Constantinople, 19 February 1697, SOAS Paget Papers, Box 3, Bundle 16, f. 21r. For more on this point, see chapter 4 of this dissertation.

time. Like his predecessors, Aspinwall assured Ottoman ministers that British vessels would observe the neutrality of Ottoman ports and harbors. Yet as British diplomats dealt with Ottoman demands for compensation for goods seized by privateers, they viewed the workings of Ottoman justice to be fundamentally different from those that prevailed in Europe. In part, this stemmed from different legal structures. An Armenian merchant at Livorno who served as procurator for Ottoman merchants pursuing restitution of their goods made this point when he expressed his doubts that the merchants he represented would agree to further legal efforts for restitution because they “are not accustomed to take long in their cases, & they have neither patience, nor knowledge of the Cases & suits of Europe, since in all Turkey both Criminal and Civil cases are concluded quickly.”¹¹⁶ Unwilling to wait on British courts, the merchants would more likely turn to their own government for satisfaction. Aspinwall similarly warned of repercussions if he had to tell Ottoman merchants that they would need to wait for compensation, “till the Forms can be gone through, & Points of Law canvassed.”¹¹⁷

More broadly, Ottoman demands for restitution fed into British and European conceptions of the Ottoman Empire as one whose government was fundamentally unrestrained by law. If British officials recognized Ottoman authority and justice, they saw its workings as fundamentally different from those that prevailed in Britain or Europe. The directors of the Levant Company wrote to Aspinwall in October 1746 to

¹¹⁶ “...mais je ne puis me promettre autant de la part des Turqs, qu'ils ne sont pas accoutumés à trainer en Longeur ses affaires, & ils n'ont ny patience, ny Intelligence dans les Litiges & Controverses d'Europe, puisque en toute la Turquie soit affaires Criminel, ou Civil est terminé le plus Court Chemin,” Giovanni Bochi, Livorno, 6 June 1749, TNA SP 98/55, f. 132r; Burrington Goldsworthy to John March, Livorno, 1 May 1750, TNA SP 98/55, f. 164r-165r.

¹¹⁷ Aspinwall to Harrington, Belgrade, 19 June 1745, TNA SP 97/32, f. 235r.

register their unease that the Porte persisted in holding the British nation responsible for the actions of privateers, “contrary to their own Laws, to our Capitulations, and without ever considering that every Countrey & Government have Laws and Rules, which it is no more in their Power than it is in the Grand Signior's to depart from.”¹¹⁸ Aspinwall himself had previously warned Newcastle that Ottoman patience had run thin and “God know what Extremitys may follow,” if a speedy reply was not forthcoming from the British government regarding the depredations of privateers.¹¹⁹ A year later, the British consul at Latakia on the Syrian coast informed Porter that Ottoman officials there had advised him that they would not be responsible for what befell him or other British merchants if the goods taken by privateers were not recovered.¹²⁰ Porter observed that a similar situation existed throughout the Ottoman Empire and he later described the Ottomans as “a Lawless sett of People.”¹²¹

From a more balanced perspective, we can see that British diplomats confronted not a “lawless” Ottoman Empire, but rather the intersection of different legal authorities as the extraterritorial jurisdiction of the British state collided with the maritime sovereignty of the Ottoman Empire. However, Admiralty jurisdiction over privateers and their prizes meant that British representatives in the Levant could do little on their own to regulate the behavior of British vessels in the Levant. In 1747, George Wakeman, the British consul at Cyprus, protested that he could not be held accountable for the actions

¹¹⁸ Governor and Company to Aspinwall, London, 14 October 1746, TNA SP 105/118, 25.

¹¹⁹ Aspinwall to Newcastle, Constantinople, 20 August 1746, TNA SP 97/32, f. 331r.

¹²⁰ Copy of letter from Edward Purnell to Porter, Latakia, 24 March 1747, TNA SP 97/33, f. 92r-v.

¹²¹ Extract of letter from Porter to Newcastle, Constantinople, 18 May 1747, TNA SP 97/33, f. 108r-v; Porter to Bedford, Constantinople, 25 April 1748, TNA SP 97/33, f. 318r.

of a privateer who carried a commission that made him “entirely independent of my Authority.”¹²² In the same year, Robert Man, commander of the warship *Lynn*, advised Porter that he was unable to force the commanders of privateers to restore goods taken from a prize without laying himself open to prosecution.¹²³ At least some goods appear to have been left uncondemned at Livorno after the Crown ordered privateers to avoid interfering with items belonging to Ottoman subjects.¹²⁴ Consul Purnell recommended that orders also be sent to Britain’s consuls to ensure that no prizes taken in the Levant were condemned until it could be confirmed whether they carried French or Ottoman goods.¹²⁵ Porter meanwhile requested Ottoman assistance in the apprehension of a British privateer who had taken a French prize in Levantine waters in contravention of royal orders.¹²⁶ On 8 September 1747, the King further ordered the judges of the vice-admiralty courts at Gibraltar and Minorca to refrain from condemning ships or goods when a claim was made upon them by an Ottoman subject and when depositions suggested that Ottoman subjects or their goods might have been on board the ship.¹²⁷

¹²² Wakeman to Porter, Cyprus, 3 April 1747, TNA SP 97/33, f. 113v.

¹²³ Mann to Porter, the *Lynn* at Smyrna, 31 March, 1747, TNA SP 97/33, f. 88r.

¹²⁴ Governor and Company to Porter, London, 26 January 1747, TNA SP 105/118, p. 60. The Company further congratulated Porter that no new seizures of Ottoman goods had taken place since his arrival at Constantinople, Governor and Company to Porter, London, 28 March 1747, TNA SP 105/118, p. 66.

¹²⁵ Purnell, Latakia, 24 March 1747, TNA SP 97/33, f. 93r.

¹²⁶ “Copy of an Italian Paper given to the Vizir by his Excellency Mr. Porter,” undated, TNA SP 97/33, f. 38r-v.

¹²⁷ Samuel Chalmers to Thomas Corbett, Gibraltar, 25 March 1748, TNA ADM 1/3882; John Edwards to Barrington Goldsworthy, London, 26 December 1746, TNA SP 98/55, f. 38r-50v; Governor and Company to Aspinwall, London, 20 March 1746, TNA SP 105/118, 3.

The intersection and collision of lines of authority was well illustrated by the activities of the privateer *Fortunatus* Wright, whose seizure of half a dozen French vessels in the Levant in 1746 and 1747 angered Ottoman ministers and caused Sir James Porter to fear that the Ottomans might seek to proceed against Wright as a pirate, despite his commission from the king.¹²⁸ Meanwhile, the British government issued a warrant for Wright's arrest and he was imprisoned at Livorno until he arranged bail to respond to the case against him at the High Court of the Admiralty.¹²⁹ Wright was outraged at this treatment. Writing to Horace Mann to request his assistance, the privateer protested that he had dutifully observed royal orders not to cruise in the Levant and argued that the vice-admiralty court at Port Mahon had legitimized all his prizes. Yet, the Levant Company had urged that he be “taken up as a Pyrate” on account of “the clamours of a parcel of Barbarous Turks.”¹³⁰ Wright similarly defended his actions in a letter to Barrington Goldsworthy, the English consul at Livorno, in which he again recounted his adherence to the rules of prize adjudication and the evidence to support his contention that the disputed goods were, in fact, French. He closed his letter by declaring that he would accept the judgment of the Admiralty, being responsible to it alone and not to “any Agent of the Grand Signiors, to the Grand Signior himself, or to any other Power Seeing I am an Englishman and Acted under a Commission from my Prince.”¹³¹ Although Wright

¹²⁸ Porter to Robert Man, commander of His Majesty's ship the *Lynn*, Constantinople, 23 March 1747, TNA SP 97/33, f. 65v, 79v-80r, 90v; Porter to Newcastle Constantinople, 25 April 1747, TNA SP 97/33 f. 79v-80r; Porter to Goldsworthy, Constantinople, 2 April 1747, TNA SP 97/33, f. 90v.

¹²⁹ To Barrington Goldsworthy, Whitehall, 16 May 1748, TNA SP 98/55, f. 66r; Goldsworthy to the Duke of Bedford, Livorno, 10 June 1748, TNA SP 98/55, f. 68r.

¹³⁰ Wright to Horace Mann, Livorno, 1 January 1748, TNA SP 98/56, f. 21r.

¹³¹ Wright to Goldsworthy, Livorno, 4 June 1749, TNA SP 98/55, f. 131r.

was ultimately ordered to restore the Ottoman goods he had seized, his impassioned appeals testify to an avenue of extraterritorial authority that would become increasingly prominent in the next century.

IV. *Conclusion*

In the Mediterranean, as in the Atlantic, the War of the Austrian Succession demonstrated that Britain's oceanic empire was just one of several which claimed and conveyed sovereignty over maritime space. Consequently, although the conflict provided enough successes to convince Britons that they “ruled the waves,” it also and more prosaically confirmed the limits of British naval power.¹³² The clash of rival claims to maritime jurisdiction and oceanic sovereignty was confined neither to the Mediterranean nor to the interaction of European and extra-European polities. Ottoman claims to sovereignty over Levantine waters broadly paralleled those made by Spain in the Caribbean; in both the Levant and the Caribbean, British navigation became central to the competition between different conceptions of how sovereign authority operated at sea. The legal regime of the Atlantic world was defined by the intersection of the imperial, sovereign and jurisdictional claims put forward by Britain, Spain, and other European powers.¹³³ In the Mediterranean, avenues of British and Ottoman maritime authority continued to coexist uneasily and to create a complex legal environment. From this

¹³² On the significance of the period around 1740 for the emergence of a conception of the British Empire as a trans-Atlantic polity, see David Armitage, *The Ideological Origins of the British Empire* (Cambridge: Cambridge University Press, 2000), chap. 7, “Empire and Ideology in the Walpolean era.” Jonathan Scott traces the evolution of conceptions of Britain as an insular and maritime power in *When the Waves Ruled Britannia: Geography and Political Identities, 1500-1800* (Cambridge: Cambridge University Press, 2011).

¹³³ Benton, *A Search for Sovereignty*, chap. 3, “Sovereignty at Sea: Jurisdiction, Piracy and the Origins of Ocean Regionalism.”

perspective, the ability of the Ottoman Empire to cause the British government to try, yet again, to restrain the behavior of its privateers is as striking as the general failure of its attempts to secure its waters from the effects of European warfare.

Anglo-Ottoman negotiations over the activity of British privateers in the eastern Mediterranean highlighted the legal ambiguity of those waters. Although British diplomats disparaged Ottoman justice, they had to admit that the Ottoman state possessed the authority to extract the restoration of prizes and payment of compensation. When the Admiralty Court judge Sir Henry Penrice was asked in 1747 to consider whether prize courts should be established at the East India Company's factories, he warned of “the Inconveniences that may arise to his Majesties Subjects trading within the Dominions of an Absolute Prince,” who might order the seizure of the Company's property if he thought injustices had been done to his subjects. As an example of the risks to which the East India Company would be exposed by British privateers operating in the Indian Ocean, the judge thought “it may not be amiss just to hint” of the difficulties the British had encountered over prizes taken in Levant.¹³⁴

Penrice's comments are indicative of the close of a period when European and extra-European empires simultaneously exerted sovereignty over oceanic space. The rapidity with which this situation came to a close in the Indian Ocean is suggested by the fact that only a decade later three jurists advised that Indian ships taken in the Indian Ocean did not have to be formally condemned before a prize court, “neither treaties nor

¹³⁴ Penrice to Thomas Corbett, Doctors Commons, 15 December 1747, TNA ADM 1/3881.

usage between the Indians and their enemies requiring it.”¹³⁵ In contradiction to his colleagues who denied that South Asian merchants ought to have recourse to prize courts, George Hay instead held that the capture of their ships, as well as those of the French, had to be adjudicated before the Court of Admiralty, because, “the maritime law of nations universally received requires a judicial determination in the Court of Admiralty.”¹³⁶ More significant than the issue of whether the law of nations extended beyond European states was, however, the question of how far extra-European polities could determine the legal and political environments through which vessels sailed. Although Penrice had not commented on the degree to which South Asians were entitled to partake in the law of nations, he had had no doubt that Mughal sovereignty shaped the legal regime of the Indian Ocean. With the dramatic expansion of the East India Company's empire in that arena, the British had less reason to acknowledge ways in which Mughal sovereignty could make itself felt at sea. Instead, the East India Company mounted campaigns against what it termed to be Indian Ocean pirates at the same time that the British state depended on peace with Morocco and the North African regencies to sustain its strategic position in the Mediterranean.¹³⁷

In the Mediterranean too the British seem to have been less anxious as to how the Ottoman Empire would react to privateering in the Levant during the Seven Years' War than they had been a few years earlier. The Levant Company was thus surprisingly

¹³⁵ C. Pratt, C. York, Jn. Browning, 13 November 1757, in *Reports of cases determined by the High court of admiralty*, 392.

¹³⁶ *Idem*.

¹³⁷ Philip J. Stern, *The Company-State: Corporate Sovereignty and the Early Modern Foundations of the British Empire in India* (Oxford: Oxford University Press, 2011), chap. 9, “‘A Sword in One Hand & Money in the Other’: Old Patterns, New Rivals,” *passim*.

sanguine when, at the outbreak of the Seven Years' War, the Ottoman Emperor again insisted that the belligerents avoid combat in "His Seas." In November 1756, the directors of the Company wrote to Porter and advised him that "We are pretty easy about it [the sultan's command]; knowing that Your Excellency's Experience will find Ways and Means to prove what Prizes shall be made are out of Gun-Shot of any of their Forts of Castles."¹³⁸ Nevertheless, the Company still assumed that Ottoman officials would have jurisdiction to decide whether prizes had been taken within the empire's waters. Through the late eighteenth century, British interference with Ottoman trade remained a matter of diplomatic contention and the Ottoman government continued to seek to ensure the security of Levantine trade. Indeed, during the War of American Independence, the Ottomans explicitly referred to their earlier efforts to establish a maritime boundary across the eastern Mediterranean when they advised the British and French to avoid interfering with Ottoman commerce and committing hostile acts near Ottoman ports.¹³⁹ The Porte was unable to assert its sovereignty over Levantine waters in a meaningful way, but it continued to insist on the security of Ottoman ports and harbors. In this respect, the Ottoman Empire also continued to shape the political conditions of British navigation in the eastern Mediterranean.¹⁴⁰

¹³⁸ Governor and Company to Porter, London, 26 November 1756, TNA SP 97/18.

¹³⁹ See the English translation of the "Declaration of the Ottoman Porte concerning the Neutrality to be Observed in Her Seas, submitted to the Ambassadors of France and of Great Britain, 12th February 1780," in Sir Francis Piggott and G. W. T. Omond, *Documentary History of the Armed Neutralities, 1780 and 1800* (London: University of London Press, 1919), 194-197. Mübahat S. Kütükoğlu, *Omanlı-İngiliz İktisadî Münasebetleri: I (1580-1838)* (Ankara: Türk Kültürünü Araştırma Enstitüsü, 1974), 59; Aksan, *An Ottoman Statesman in War and Peace*, 177.

¹⁴⁰ Cunningham, *Anglo-Ottoman Encounters in the Age of Revolution*, 93-94.

The trajectories of British expansion in the Mediterranean and Indian Ocean diverged in the last half of the eighteenth century. While the Seven Years' War saw the full emergence of the East India Company's territorial empire, it also ushered in a nearly fifty-year period when the Mediterranean largely ceased to be of strategic importance to Britain. Although the loss of Minorca marked, for Britain, the opening of the Seven Years' War, this conflict was the first in half a century in which the Mediterranean was not a primary theatre of war. Thanks to the "diplomatic revolution" in Europe that saw France and Austria put aside their traditional rivalry, there were no campaigns in southern Europe and Italy that required the support of British fleets.¹⁴¹ The different trajectories of Britain's Mediterranean and Indian Ocean presences through most of the second half of the eighteenth century should not, however, distract us from the continuities that had previously existed between the British positions in these two oceanic basins. Through the seventeenth century and well into the eighteenth, the Mediterranean was a sea whose political and legal environment was shaped by a variety of states and empires, but dominated by none of them.¹⁴² In this respect it was not significantly different from other early modern oceanic bodies.

¹⁴¹ Rodger, *The Command of the Ocean*, 269.

¹⁴² Molly Greene, "Beyond the Northern Invasion: The Mediterranean in the Seventeenth Century," *Past & Present*, no. 174 (2002): 44-45.

Conclusion

The Mediterranean in the Imaginative Geographies of the Early Modern World

Widdaw about 190 Leagues below Cape Coast is a neutrall port . . . and even now in time of war as free a port as Leghorn or Genoa.¹

The Mediterranean was a maritime region where English ships sailed into waters that were under the sovereignty of foreign polities and where English legal authority regularly collided with that of other states. Consequently, the history of the English presence in the early modern Mediterranean is one of interactions that shaped the legal and political organization of the sea. It is also a history that moves beyond the persistent insularity of narratives of British imperial development. In the construction of the legal and political regimes of the Mediterranean, this history is intimately connected to and intertwined with the histories of other European and extra-European polities.²

The evolution of the English presence in the Mediterranean serves as a model for understanding early modern English expansion within the context of the multinational histories of oceanic regions. Around the early modern world, foreign empires and polities shaped the commercial environments in which English merchants worked and the legal

¹ “Heads of Inquiries relating to the Trade to Africa, with observations thereupon, presented by Mr. Harris,” 2 January 1708, TNA CO 388/11, Doc. I13.

² On a “connected” approach to early modern history, see Sanjay Subrahmanyam, “Connected Histories: Notes towards a Reconfiguration of Early Modern Eurasia,” *Modern Asian Studies* 31, no. 3 (July 1997): 735-962. Jorge Canizares-Esguerra similarly argues for integrating the histories of the British and Iberian Atlantics in *Puritan Conquistadors: Iberianizing the Atlantic, 1550-1700* (Stanford: Stanford University Press, 2006).

and political foundations of the seas through which English vessels sailed.³ While the interaction of different sovereign authorities shaped the legal and political organization of trade in both the Atlantic and Indian Oceans, this situation was most evident in the Mediterranean, where the English state possessed only limited territorial and maritime sovereignty and where English merchants conducted their business almost entirely under the legal authority of foreign states. Rather than excluding the Mediterranean from narratives of English expansion, the limits of English sovereignty in that sea instead make it vital to understanding how legally and politically pluralistic maritime environments shaped the expansion of English trade and state authority.

Over the course of the seventeenth century, the place of the Mediterranean within English expansion underwent a profound transformation. During the early stages of this expansion, it was in the Mediterranean that merchants learned to trade to distant and alien regions. They subsequently carried the commercial strategies they learned in that sea into the Atlantic and Indian Oceans.⁴ However, trading techniques rooted in cosmopolitanism and the accommodation of cultural difference gave way to colonial settlement and to corporate trade backed up by the threat of force. With the colonization of Tangier in 1661, Charles II and his ministers sought to integrate the Mediterranean into England's wider imperial expansion. The failure of that colony illustrated the ideological and institutional processes that, from the second half of the seventeenth century onwards, excluded that sea from the wider growth of England's colonial empire. Meanwhile, the

³ The only study to bring the legal regimes of the Indian Ocean into historical study remains C. H. Alexandrowicz, *An Introduction to the History of the Law of Nations in the East Indies (16th, 17th and 18th Centuries)* (Oxford: Clarendon Press, 1967).

⁴ Alison Games, *Web of Empire: English Cosmopolitans in an Age of Expansion, 1560-1660* (Oxford: Oxford University Press 2008), chap. 2, "The Mediterranean Origins of the British Empire."

rise of oceanic empires further encouraged the division of Europe from the Atlantic world as imagined “lines of amity” separated political conditions in Europe from those that prevailed among colonial settlements.⁵

Despite the differentiation of Atlantic and Mediterranean oceanic regions, British merchants and administrators continued to invoke the Mediterranean as a model for the organization of Atlantic trade well into the eighteenth century. Instead of separating the inner sea from other oceanic regions, they understood that the pluralistic environment of the Mediterranean could represent conditions in parts of the Atlantic and Indian Oceans. Since the legal and conceptual separation of Europe from the wider world was central to both the development of European empires and to the ways in which Europeans thought about their relationship to other societies, scholars have focused their attention on processes of regional and oceanic differentiation.⁶ Yet Europeans imagined the political and commercial geography of the early modern world in diverse and competing ways. Divergent views that held the Mediterranean to be comparable to or distinct from other oceanic bodies bring the sea back into the wider perspective of global history.

For some early modern commentators, the Atlantic Ocean represented a political and commercial environment that was totally distinct from that which prevailed in Europe and the Mediterranean. An example of this view arose during Genoese debates

⁵ Elizabeth Mancke, “Empire and State,” in *The British Atlantic World*, ed. David Armitage and Michael J. Braddick, 2nd ed. (New York: Palgrave Macmillan, 2009), 193.

⁶ Carl Schmitt offered one of the more extreme accounts of how early modern conceptions of the Atlantic as a lawless space served to separate the state and national communities of Europe from the wider world in *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum*, tr. G. L. Ulmen (New York: Telos Press, 2003). More recent studies historicize the construction of legal and political boundaries between Europe and the world, as in Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400-1900* (Cambridge: Cambridge University Press, 2010).

over a proposal to create a free port at the town of La Spezza at the start of the eighteenth century.⁷ Opponents of this prospective free port argued against it on economic and practical grounds, but they also warned that if this new port succeeded, it would attract the envy of major powers that would seek to seize it. In response, a supporter of the free port asserted that powerful states posed no threat to the development of commercial centers in Europe. This anonymous memorialist denied that great princes would declare war against a friendly prince purely for commercial gain. Instead, states like France already enjoyed commercial prosperity within their borders and their ships ranged around the world carrying foreign goods. Great princes deployed their armies to conquer provinces, not to promote trade. The memorialist then continued to note that there were not “in the Mediterranean, as in the Ocean companies of Merchants, that have the power to invade others.” The Scots had recently been able to occupy the Isthmus of Darien because that region was “a desert Country” and without defenses to overcome. The situation in Italy was, of course, entirely different and there was thus no fear of such an occupation of the heavily defended Gulf of Spezza.⁸

⁷ On free ports in the Genoese state, see Giulio Giacchero, *Origini e sviluppi del porto franco genovese, 11 Agosto 1590- 9 Ottobre 1778* (Genoa: Sagep Editrice, 1972). Giacchero does not discuss the debate of 1700 over the free port at La Spezza, but he does briefly mention subsequent proposals to establish a free port there, 156-157.

⁸ “Ne vi sono nel Mediterraneo, come nell’Oceano, compagnie de Mercanti, che habbino forze da invadere l’altrui. Li Scozzosi si sono con pochi Vascelli impadroniti di Darien, perche non havevano da espugnare fortezze essendo quello un Paese deserto, e quasi abbandonato,” see “Scritture state presentate in Genova all’esame di quella Serenissima Repubblica per la dichiarazione del Porto franco alla Spezie, et sono per la negativa et per l’affermativa,” ASF Mediceo del Principato, 1810, f. 1360v-1361r. These memorials for and against the proposed free port at La Spezza accompany an anonymous letter dated 21 August 1700, describing the rejection of this proposal. I have been unable to locate these memorials in the Genoese archives. The minutes of the debates are contained in the Archivio di Stato di Genova, Archivio Segreto, 1609.

The distinction between a Europe characterized by power politics and an Atlantic environment defined by commercial competition and imperial expansion illustrated the early modern perception that Europe was a legal and political space separate from the wider world. Early modern Europeans imagined the extra-European world as a “zone of war,” a region where the legal rules and regulations of the European state system did not apply.⁹ The history of the Scottish attempt to settle Darien illustrated this conceptual differentiation of European and Atlantic space. The decision of the Company of Scotland Trading to Africa and the Indies to attempt to colonize the Isthmus of Panama depended on its willingness to contest and to defy Spanish claims to sovereignty over that territory. The English government sought to undermine the Scottish company in order to forestall a potential competitor of the East India Company and of its own colonial empire, further revealing the extent to which colonial and extra-European commerce was a matter of imperial and state competition.¹⁰ The Spanish, meanwhile, laid siege to the Scottish settlement of Darien despite the state of peace that existed between the Scottish and Spanish kingdoms.¹¹ The Scottish Darien scheme thus affirmed the Genoese memorialist’s argument that the Atlantic was a region where the legal norms of European politics did not apply.

⁹ Eliga H. Gould, “Zones of Law, Zones of Violence: The Legal Geography of the British Atlantic, circa 1772,” *The William and Mary Quarterly* 60, no. 3 (July 2003): 471-510.

¹⁰ David Armitage, “The Scottish Vision of Empire: Intellectual Origins of the Darien Venture,” in *A Union for Empire: Political Thought and the British Union of 1707*, ed. John Robertson (Cambridge: Cambridge University Press, 1995), 97-118. See also Douglas A. Watt, *The Price of Scotland: Darien, Union and the Wealth of the Nations* (Edinburgh: Luath Press, 2006).

¹¹ On the Spanish reaction to the Scottish colonization of Darien, see Christopher Storrs, “Disaster at Darien (1698-1900)? The Persistence of Spanish Imperial Power on the Eve of the Demise of the Spanish Habsburgs,” *European History Quarterly* 29, no. 1 (1999): 5-38.

The absence of major joint-stock corporations in the Mediterranean further exemplified and reinforced the distinction between that sea and the Atlantic and Indian Ocean regions. Administrators and merchants involved in the settlement of Tangier objected to the establishment of a company to trade along the Moroccan coast on the basis that corporate trade was inappropriate for North Africa, where the English state could protect the trade of its subjects and where polities provided relatively stable commercial conditions. Conversely, the perception that parts of the Atlantic world were lawless spaces reappeared regularly in on-going debates over the organization of English trade along the coast of Africa during the first half of the eighteenth century.¹² Agents of the Royal African Company defended that corporation's monopoly on English trade to the coast of Africa by arguing, "The way of Trading here is quite Different from the way of Trading in Europe, or in Turkey; The Traders there have Towns to Reside in, where they are Secure in their Persons and Effects, and all People may go to whom they will, as is done in London: But here the Trade must be sent for and Paid for . . . and must be Contested for with the Dutch."¹³ A defender of the Company later explained that it was necessary on the coast of Africa "to traffick and deal with a Barbarous & uncivilized People, made up of Severall Petty & Independent Kingdoms & Governments, (if they may be so call'd who have no Laws amongst themselves but force)." Only a joint-stock company could maintain the "constant force & Strength" to sustain trade under such

¹² On the debates between the Royal African Company and free traders, see K. G. Davis, *The Royal African Company* (London: Longmans, Green, 1957), 122-152. See also, William Pettigrew, "Free to Enslave: Politics and the Escalation of Britain's Transatlantic Slave Trade, 1688-1714," *The William and Mary Quarterly*, 3rd ser., 64, no. 1 (January 2007): 3-38.

¹³ "Copy of a Letter from Sir Dalby Thomas & others to the Royal African Company, dated at Cabo Corso Castle the 26 of November 1709 relating to the Trade to africa," TNA CO 388/13.

conditions.¹⁴ The political environment of Africa thus required that trade be organized differently than it was in Europe.

Opponents of the Royal African Company put forward a different portrait of extra-European political conditions. According to merchants who favored an open trade along the African coast, African rulers treated them with adequate justice and provided them with sufficient security that they did not need the protection of forts and factories supported by a joint stock. The extra-European world was anything but lawless. Instead, the layers of sovereignty that regulated African, Asian and Indian Ocean space paralleled those which existed within Europe. One merchant thus denied that trade to extra-European destinations had to be organized differently than European trade, “And as To it’s Being one thing to Carry on Trade With an European and another thing to Carry it on With the Petty States of Africa I never found any other Difference but that I allways met with as good if not much better Quarter from the Latter then I Ever have done for 30 Years Past with the former.” This merchant suggested it was as absurd to think that forts were necessary to maintain the slave trade as it would be for a Frenchman to suggest that he would have to build a fort at Southampton to sustain his trade in grain.¹⁵

The comparison of Mediterranean and Atlantic space contained in attacks on the Royal African Company suggest a different perception of the early modern world from that put forward by the Company’s supporters. These merchants objected to the idea that political and commercial conditions in Africa were decisively alien to those which

¹⁴ “Anonymous Letter in relation to the African Trade,” London, 21 March 1726, TNA CO 388/25 f. 173v.

¹⁵ “Some Remarks on the Subject matter mentioned by the Companys Councill att the First Hearing,” TNA CO 388/25, f. 310r-v. These memorial is contained with others from March 1726.

prevailed in Europe and the Mediterranean. Instead, opponents of the Royal African Company frequently cited the regulated Levant Company as an alternative model for the institutional regulation of English trade along the African coast.¹⁶ In the process, they implicitly equated the political and commercial conditions of the eastern Mediterranean to those in the Atlantic. In this vein, one pamphlet directed against the African Company rejected its arguments that it held legal title to the land occupied by its forts. Instead, the author insisted, “ 'twould be as monstrous to own or pretend, that this *African* Company have a legal Property to the Lands of the Kings of *Morocco*, *Widda*, or of any other Prince in *Africa*, by reason of their having Factories there, as 'twould be to affirm, that the *Turkey* Company have the Property of the Lands of the Grand Seignior in *Turkey*, because they have Factory-Houses in the *Turkish* Dominions.”¹⁷ Conversely, the members of the Royal African Company rejected the comparison between the Levant and African coast and argued that a regulated company could not succeed there “unless the Seperate Traders undertake to reduce the Coast of Guinea to be under the Government of one Sovereign Porte & that the Natives become as Civiliz'd as the People of Constantinople.”¹⁸

In the long-running disputes between the Royal African Company and its adversaries, both parties turned to the Mediterranean as a point of reference. They

¹⁶ For instance, see “Answers of Mr. May to Queries,” 15 December 1707, TNA CO 388/11, Doc. 112; South Sea Company to the Lords Commissioners for Trade and Plantations, London, 4 March 1725, TNA CO 388/25, f. 139v.

¹⁷ *An Answer to a Paper call'd Particulars against the Bill for an Open Trade to Africa: With some Presidents touching the laying Open Foreign Trades, by Act of Parliament* (n. p. 1713), 1.

¹⁸ “Some General Observations & particular Remarks on the Report of the Lords Commissioners for Trade and Plantations dates the 3d of February 1708 upon the Petition of the Royal African Company,” Recieved 3 January 1709, TNA CO 388/11, Doc. 182.

understood that sea to be a maritime region ringed by sovereign polities with the authority to regulate and protect trade within their ports. The question was whether this model could be accurately applied to the political situation along the coast of Africa. Some merchants argued that political and commercial conditions in parts of Africa were directly comparable to those that prevailed in Europe and the Mediterranean. One anonymous respondent to the arguments of the Royal African Company explained that, unlike sparsely populated North America, it was impossible to establish colonies on the west coast of Africa in the face of the local resistance of well-armed and sizable populations. Moreover, it was also unnecessary since the local polities maintained political conditions amenable to trade, “Many Parts have set up free Places of Trade & Particularly Widda before mentioned one of Them Maintained as Regular a Neutrality as at Leghorn all the Time of the Two French Wars With all European Nations.”¹⁹

The ideological barriers that separated the Mediterranean from the Atlantic following the enactment of the Navigation Acts and failure of Tangier began to weaken during the first half of the eighteenth century. As processes of state formation and economic integration regularized political and commercial interactions around the Atlantic, merchants and administrators began to question the differentiation of that oceanic body from the Mediterranean.²⁰ When free traders emphasized the ability of African rulers and state to regulate trade along their coasts, they testified to dramatic

¹⁹ “Some Remarks on the African Trade, which could not be heard, it being late,” TNA CO 388/25, f. 314v. This memorial is contained with others from March 1726. On the neutrality of Whydah, see above, chapter 4.

²⁰ Ian K. Steele charts the integration of the western Atlantic and Europe during the early eighteenth century in *The English Atlantic, 1675-1740: an Exploration of Communication and Community* (Oxford: Oxford University Press, 1986), chap. 10, “Send Peace and War beyond the Line, 1667-1739.”

political and commercial transformation that reshaped the Atlantic world during the eighteenth century. With the rise of the Atlantic economy and intensification of Atlantic trade, polity and regime formation in Africa and Europe were intertwined.²¹ The slave trade and the rise of plantation complexes enriched European economies and generated revenue that contributed to the development of the eighteenth-century fiscal military states. At the same time, the slave trade became an engine driving political centralization within the diverse political communities of Africa.²² In a sense, the Atlantic was becoming more like the Mediterranean even as European commentators separated these oceanic bodies from one another and differentiated Europe from the wider world. English merchants well understood that the balance of power on the African coast favored indigenous authority and that it was African rulers and merchants who frequently controlled the terms of trade.²³

Diverse imaginative geographies underlay early modern European conceptions of the wider world.²⁴ Europeans distinguished the political and cultural organization of their

²¹ Joseph C. Miller, "The Dynamics of History in Africa and the Atlantic 'Age of Revolutions,'" in *The Age of Revolutions in Global Context, c. 1760-1840*, ed. David Armitage and Sanjay Subrahmanyam (Houndmills: Palgrave Macmillan, 2010), 101-124.

²² On the importance of political centralization for the pursuit of the slave trade, see Paul E. Lovejoy and David Richardson, "'This Horrid Hole': Royal Authority, Commerce and Credit at Bonny, 1690-1840," *The Journal of African History* 45, no. 3 (2004): 363-392. However, forms of political and commercial organization varied considerably along the African coast. As a result, informal means to regulate cross-cultural trade coexisted with the establishment of political authority over trade. See idem, "Trust, Pawnship, and Atlantic History: The Institutional Foundations of the Old Calabar Slave Trade," *The American Historical Review* 104, no. 2 (April 1999): 333-355.

²³ On the relative balance of political and commercial power between African and Europeans in the conduct of the slave trade, see John Thornton, *Africa and Africans in the Makings of the Atlantic World, 1400-1800*, 2nd ed. (Cambridge: Cambridge University Press, 1998); David Eltis, *The Rise of African Slavery in the Americas* (Cambridge: Cambridge University Press, 2000).

²⁴ The term "imaginative geographies" comes from Edward Said, *Orientalism* (New York: Pantheon Books, 1978). For a more historically grounded study of the cultural construction of geography, see Martin

Eurasian peninsula and set it against visions of African and Asia as barbarous continents. It was, however, also possible for merchants to view an African port-city as comparable to Livorno and the political conditions of trade along Africa's Atlantic coast as equivalent to those which prevailed in Europe or the Mediterranean. Eighteenth-century thinkers frequently adopted a universal or cosmopolitan perspective when considering Europe's place within the wider world.²⁵ When merchants compared the political and commercial conditions of different trading centers, they articulated yet other ways to understand Europe's relationship to African or Asian societies. For both supporters of the Royal African Company and their adversaries, the characterization of African societies was naturally intertwined with their own commercial interests. Nevertheless, it is notable that some of the strongest voices for the quality of law and justice in extra-European societies were those merchants who themselves had lived among or interacted with them.

Even as European empires expanded into the Atlantic and Indian Oceans, the Mediterranean remained a source of models for interaction with extra-European polities. The lessons that commentators drew from the Mediterranean changed during the seventeenth and eighteenth centuries. If seventeenth-century merchants and travelers learned the value of cultural accommodation and cosmopolitanism in the Mediterranean, their eighteenth-century successors were more confident in British power. Merchants trading to Africa thus emphasized the importance of “the awfull Countenance of Great

W. Lewis and Kären E. Wigan, *The Myth of Continents: A Critique of Metageography* (Berkeley: University of California Press, 1997).

²⁵ See, for instance, Sankar Muthu, *Enlightenment against Empire* (Princeton, N. J.: Princeton University Press, 2003); Jennifer Pitts, *A Turn to Empire: The Rise of Liberal Imperialism in Britain and France* (Princeton, N. J.: Princeton University Press, 2005).

Britain and her Floating Castles” to secure their trade from European rivals.²⁶

Nevertheless, these merchants also understood the early modern world to be decentered and composed of sovereign polities that exercised legal authority within their borders.²⁷

As a region where Britain's imperial presence was limited and tenuous, the Mediterranean was an ideal example of a maritime environment where merchants depended on foreign governments to regulate and to secure trade. Moreover, the English presence in the Mediterranean offered a standard by which to understand the conditions of English trade along the African coast.

The pluralistic and decentralized quality of the Mediterranean and of the early modern world more broadly deteriorated rapidly at the close of the eighteenth century. While processes of state formation and economic integration bound European and extra-European polities more closely together, these same processes contributed to Europe's imperial ascendancy.²⁸ The efforts of the Ottoman state to expand and to affirm its sovereignty over Levantine waters in the face of Anglo-French competition, exemplified the enduring ability of that empire to shape the political and legal organization of the

²⁶ “Some Remarks on the African Trade, which could not be heard, it being late,” TNA, CO 388/25, f. 322r. In similar terms, a group of free traders argued that “Shippes of War, the moveable Forts of this Nation, Cruizing along the Coast of Africa, can only be the Security and Protection of this Trade.” See “The Memorial of the Merchants of London Trading to the Coast of Africa,” London, 18 March 1726, TNA, CO 388/25, f. 167v.

²⁷ On the decentered quality of the early modern world, see David Hancock, *Citizens of the World: London Merchants and the Integration of the British Atlantic Community, 1735-1785* (Cambridge: Cambridge University Press, 1995); idem, *Oceans of Wine: Madeira and the Emergence of American Trade and Taste* (New Haven and London: Yale University Press, 2009).

²⁸ C. A. Bayly, *The Birth of the Modern World, 1780-1914* (Malden, MA: Blackwell Publishing, 2004), chap. 4, “Converging Revolutions, 1780-1820;” idem., “The Age of Revolutions in Global Context: Afterword,” in *The Age of Revolutions in Global Context, c. 1760-1840*, ed. David Armitage and Sanjay Subrahmanyam (Houndmills: Palgrave Macmillan, 2010), 209-217. See also John Darwin, *After Tamerlane: The Global History of Empire* (London: Allen Lane, 2007), chap. 4, “The Eurasian Revolution.”

eastern Mediterranean. However, the inability of the Ottoman Empire to enforce its sovereignty over the Levant also foreshadowed its declining power in the face of European imperial expansion. Russian and then French expansion into the Levant subsequently brought Ottoman dominance there to a close. Two decades of imperial competition between France and Britain further destroyed the early modern pattern of Mediterranean maritime and commercial life. Napoleon expelled the Knights of Malta from their island home, which subsequently became a British colony. As a result, an island that was indicative of the political and legal ambiguities of the Mediterranean became one of a global network of naval bases that underpinned Britain's nineteenth-century naval dominance.²⁹ In the place of the relatively equal terms of trade that had characterized the sea through the early modern period, like parts of the Indian Ocean and of the American continents, the sea was integrated into global patterns of commerce that revolved around the industrializing economies of Europe.³⁰

Notably, it was an aggressive new North American empire, anxious to establish its place in the Atlantic state community, which began the process that ultimately brought North African corsairing to a close.³¹ When the fledgling navy of the United States

²⁹ David Abulafia describes the imperial rivalries that reshaped in the Mediterranean in *The Great Sea: A Human History of the Mediterranean* (London: Allen Lane, 2011), pt. 4, chap. 8, "The View through the Russian Prism, 1760-1805." See also Thomas W. Gallant, *Experiencing Dominion: Culture, Identity and Power in the British Mediterranean* (Notre Dame, Ind.: University of Notre Dame Press, 2002).

³⁰ For a comparative overview of the Mediterranean and Indian Oceans during the early modern and modern periods, see C. A. Bayly and Leila Fawaz, "Introduction: The Connected World of Empires," in *Modernity and Culture*, ed. Leila Tarazi Fawaz and C. A. Bayly (New York: Columbia University Press, 2002), 1-27.

³¹ The most reliable works on America's wars with the regencies and on the significance of those campaigns are Frank Lambert, *The Barbary Wars: American Independence in the Atlantic World* (New York: Hill and Wang, 2005); Frederik C. Leiner, *The End of Barbary Terror: America's 1815 War against the Pirates of North Africa* (Oxford: Oxford University Press, 2006).

launched attacks against the North African regencies, it was of course following in a well-established tradition of deploying naval power against those polities and their corsairs. However, the ability of the United State to free itself from payment of tribute to the regencies helped to set off a process whereby the European powers brought an end to the activities of Mediterranean corsairs. American naval success combined with the growth of European military power and increasing confidence in Europe's civilizing mission to undermine the legitimacy of the *corso* and its sponsors in European minds.³²

During the first half of the nineteenth century, imperial expansion and growing confidence in European superiority affirmed and intensified earlier conceptual divisions between Europe and the wider world. In Africa and in Asia, the sovereign pluralism that had characterized the early modern period began to fade in the face of European imperial dominance.³³ Instead, Europeans increasingly imagined themselves to be at the center of a community of states. North Africa was assimilated into extra-European space while the Ottoman Empire was formally, but only partially, incorporated into the European state community. However, European dominance over Mediterranean waters was complete. In both North Africa and in the Ottoman Empire, nineteenth-century treaties shifted the

³² The best account of Europe's changing relationship with the North African regencies in the early nineteenth century comes in Gillian Weiss, *Captives and Corsairs: France and Slavery in the Early Modern Mediterranean* (Stanford: Stanford University Press, 2011).

³³ Christian Windler, "Representing a State in a Segmentary Society: French Consuls in Tunis from the Ancient Régime to the Restoration," *The Journal of Modern History* 73, no. 2 (June 2001): 233-236. Legal pluralism would survive, but within European empires and through the extension of extraterritorial jurisdictions into extra-European polities. On this, see Lauren Benton, *Law and Colonial Culture: Legal Regimes in World History, 1400-1900* (Cambridge: Cambridge University Press, 2002), 244-252.

foundations of consular jurisdiction from legal pluralism to outright legal extraterritoriality.³⁴

The dramatic growth of the British Empire from the end of the eighteenth century only highlighted the different conditions under which England's early modern commercial and maritime expansion had taken place. Diverse claims to sovereign and legal authority over Mediterranean waters defined patterns of trade and navigation around that sea. Islamic empires, corsairs and their sponsors, and Italian principalities all claimed authority in parts of the Mediterranean and over the trade and navigation that flowed through it. The English state was just one of many sources of sovereign and legal authority that coexisted in the Mediterranean. The development of the English presence in the Mediterranean illustrated how merchants and mariners navigated among the diverse sovereign and jurisdictional authorities of that sea.

The history of English expansion is more than the history of the extension of English imperial authority. The growth of English trade and navigation carried the legal and regulatory authority of the state around the world. Even in regions like the Mediterranean, where the British Empire had a minimal presence, the expansion of the state was nonetheless evident. Yet the history of the early modern Mediterranean is also a reminder of the limits of European and British imperial expansion in this period. Indeed, the Mediterranean remained a model for understanding commercial organization in the Atlantic and Indian Oceans well into the eighteenth century precisely because it was a sea where diverse sovereign authorities shaped the contours of trade and navigation. For this

³⁴ C. R. Pennel, "The Origins of the Foreign Jurisdiction Act and the Extension of British Sovereignty," *Historical Research* 83, no. 221 (August 2010): 465-485. On the expansion of extraterritorial jurisdiction in the nineteenth century, see also W. Ross Johnston, *Sovereignty and Protection: A Study of British Jurisdictional Imperialism in the Late Nineteenth Century* (Durham, NC: Duke University Press, 1973).

reason, the Mediterranean is equally a model for understanding how English expansion occurred in a decentered and pluralistic world.

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